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THE

TRIAL

OF THE

BRITISH SOLDIERS,

OF THE 29th REGIMENT OF FOOT,

FOR THE MURDER OF

CRISPUS ATTUCKS, SAMUEL GRAY, SAMUEL MAVERICK, JAMES CALDWELL, AND PATRICK CARR,

ON MONDAY EVENING, MARCH 5, 1770,

BEFORE THE HONORABLE

BENJAMIN LYNDE, JOHN CUSHING, PETER OLIVER, AND EDMUND TROWBRIDGE, ESQUIRES,

JUSTICES OF THE SUPERIOR COURT OF JUDICATURE, COURT OF ASSIZE, AND GENERAL GOAL DELIVERY, HELD AT BOSTON, BY ADJOURNMENT, NOVEMBER 27, 1770.

BOSTON:
PRINTED AND PUBLISHED BY
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[Wemms, William,] *defendant.*

The trial of the British soldiers, of the 29th regiment of foot, for the murder of Crispus Attucks, Samuel Gray, Samuel Maverick, James Caldwell, and Patrick Carr, on Monday evening, March 5, 1770, before the Honorable Benjamin Lynde, John Cushing, Peter Oliver, and Edmund Trowbridge, esquires, justices of the Superior court of judicature, Court of assize, and general goal delivery, held at Boston, by adjournment, November 27, 1770. Boston. Printed and pub. by Belcher and Armstrong, No. 70, State st., 1807.

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1. Boston massacre, 1770.

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TRIAL

OF THE

BRITISH SOLDIERS.

AT his Majesty's Superior Court of Judicature, Court of Assize and general Goal Delivery, begun and held at Boston, within, and for the County of Suffolk, on the second Tuesday of March, in the tenth year of the reign of GEORGE the THIRD, by the Grace of GOD, of Great-Britain, France and Ireland, King, defender of the Faith, &c.

The Jurors for the said Lord the King, upon their oath present, that Thomas Preston, Esq. William Wemms, labourer, James Hartegan, labourer, William M'Cauley, labourer, Hugh White, labourer, Matthew Killroy, labourer, William Warren, labourer, John Carrol, labourer, and Hugh Montgomery, labourer, all now resident in Boston, in the county of Suffolk, and Hammond Green, boat builder, Thomas Greenwood, labourer, Edward Manwaring, Esq. and John Munroe, gentleman, all of Boston aforesaid, not having the fear of God before their eyes, but being moved and seduced by the instigation of the devil and their own wicked hearts, did, on the fifth day of this instant March, at Boston aforesaid, within the county aforesaid, with force and arms, feloniously, willfully, and of their malice aforethought, assault one Crispus Attucks, then and there being in the peace of God, and of the said Lord the King, and that he the said William Warren, with a certain hand gun of the value of twenty shillings, which he the said William Warren then and there held in both his hands, charged with gun powder and two leaden bullets, then and there, feloniously, willfully, and of his malice aforethought, did shoot off, and discharge at and against the said Crispus Attucks, and that the said William Warren, with the leaden bullets as aforesaid, out of the said hand gun, then and there by force of the said gun powder, so shot off and discharged as aforesaid, did then and there, feloniously, willfully, and of his malice aforethought strike, penetrate, and wound the said Crispus Attucks in and upon the right breast, a little below the right pap of him the said Crispus, and in and upon the left breast, a little below the left pap of him the said Crispus, thereby giving to him the said Crispus, with one of the bullets aforesaid, so shot off and discharged as aforesaid, in and upon the right breast, a little below the right pap of him the said Crispus, one mortal wound of the depth of six inches, and of the width of one inch; and also thereby giving to him the said Crispus, with the other bullet aforesaid, so shot off and discharged by the said William Warren as aforesaid, in and upon the left breast, a little below the left pap of him the said Crispus, one other mortal wound, of the depth of six inches, and of the width of one inch, of which said mortal wounds, the said Crispus Attucks then and there instantly died; and that the aforesaid Thomas Preston, William Wemms, James Hartegan, William M'Cauley, Hugh White, Matthew Killroy, William Warren, John Carrol, Hugh Montgomery, Hammond Green, Thomas Greenwood, Edward Manwaring, and John Munroe, then and there, feloniously, willfully, and of their malice aforethought, were present, aiding, helping, abetting, comforting, assisting, and maintaining the said William Warren, to do and commit the felony and murder aforesaid.

And so the Jurors aforesaid, upon their said oath, do say, that the said Thomas Preston, William Wemms, James Hartegan, William M'Cauley, Hugh White, Matthew Killroy, William Warren, John Carrol, Hugh Montgomery, Hammond Green, Thomas Greenwood, Edward Manwaring, and John Munroe, then and there in manner and form aforesaid, feloniously, willfully, and of their malice aforethought, did kill and murder the said Crispus Attucks, against the peace of the said Lord the King, his crown and dignity. JON. SEWALL, Att. pro. Dom. Rege.

This is a true Bill. WM. TAYLOR, Foreman.

At the same Court the said James Hartegan, was indicted for the murder of Samuel Gray; and the said Thomas Preston, Esq. William Wemms, William M'Cauley, Hugh White, Matthew Killroy, William Warren, John Carrol, and Hugh Montgomery, for being present, aiding, helping and abetting the said James Hartegan to do and commit the felony and murder aforesaid. *Att.* SAML. WINTHROP, *Clerk.*

And at the same Court the said Matthew Killroy, was indicted for the murder of one Samuel Maverick; and the said Thomas Preston, William Wemms, William M'Cauley, James Hartegan, Hugh White, William Warren, John Carrol, and Hugh Montgomery, for being present, aiding, helping, abetting, and assisting the said Matthew Killroy, to do and commit the felony and murder aforesaid.

Att. SAML. WINTHROP, *Clerk.*

And at the same Court the said John Carrol was indicted for the murder of one James Caldwell; and the said Thomas Preston, William Wemms, William M'Cauley, James Hartegan, Hugh White, William Warren, and Hugh Montgomery, for being present, aiding, helping, abetting, and assisting the said John Carrol to do and commit the felony and murder aforesaid. *Att.* SAML. WINTHROP, *Clerk.*

And at the same Court, the said Hugh White was indicted for the murder of one Patrick Carr; and the said Thomas Preston, William Wemms, James Hartegan, William M'Cauley, Matthew Killroy, William Warren, John Carrol, and Hugh Montgomery, for being present, aiding, helping, abetting, and assisting the said Hugh White to do and commit the felony and murder aforesaid. *Att.* SAML. WINTHROP, *Clerk.*

On Saturday, the 27th November, 1770, the Court being met, the prisoners were brought into Court and set to the bar, when the Court proceeded thus.

Clerk of the Court *read the indictment to them as before,* to which they all pleaded *not guilty.*

Clerk. God send you a good deliverance!

The Jury were called over and appeared.

Clerk. You the prisoners at the bar, these good men, which were last called and do now appear, are those who are to pass between our sovereign Lord the King and you, upon the trial of your several lives; if therefore you will challenge them, or any of them, you must challenge them as they are called to be sworn, before they are sworn, and you shall be heard.

The prisoners being asked whether they would agree in their challenges, consented that William Wemms should make challenges for them all.

Samuel Williams,	Roxbury,	challenged for cause.
Joseph Curtis,	do.	challenged for cause.
Nathaniel Davis,	do.	sworn.
Joseph Mayo,	do.	sworn.
Abraham Wheeler,	Dorchester,	sworn.
Edward Pierce,	do.	sworn.

William Glover, do. - - - challenged peremptorily.
Isaiah Thayer, Braintree, - - - - - - sworn.
Samuel Bass, jun. do. - - - - challenged peremptorily.
James Faxen, do. - - - - challenged peremptorily.
Benjamin Fisher, Dedham, - - - - - - sworn.
John Morse, do. - - - - challenged peremptorily.
James White, Medway, - - - - challenged peremptorily.
Nehemiah Davis, Brookline, - - - challenged peremptorily.
Samuel Davenport, Milton, - - - - - sworn.
Joseph Houghton, Milton, - - - - - - sworn.
James Richardson, Medfield, - - - challenged peremptorily.
John Billings, Stoughton, - - - challenged peremptorily.
Joseph Richards, do. - - - - challenged for cause.
Consider Atherton, do. - - - - - - sworn.
Abner Turner, Walpole, - - - - challenged peremptorily.
John Brown, Boston, - - - - challenged for cause.
Joseph Barrell, do. - - - - - challenged for cause.
Silas Atkins, do. - - - - - challenged for cause.
Harbottle Dorr, do. - - - - - challenged for cause.

The Clerk having gone through the pannel, and there being a deficiency of Jurors, the Sheriff, by order of the court, returned the following talesmen.

Samuel Sheppard, - - - challenged peremptorily.
John Goldsbury, - - - - - challenged for cause.
Samuel Peck, - - - - - challenged for cause
William Gouge, - - - - - challenged for cause.
Joseph Turrel, - - - - - challenged for cause.
Jacob Cushing, jun. Hingham, - - - - - sworn.
Josiah Lane, do. - - - - - - sworn.
Jonathan Burr, do. - - - - - - sworn.

N. B. *The three last being illegally returned, as Jurors, were rejected by the Court, and returned by the Sheriff as talesmen.*

Clerk. Cryer count these.

Joseph Mayo, *Foreman*, Roxbury.
Nathaniel Davis, do.
Abraham Wheeler, Dorchester.
Edward Pierce, do.
Isaiah Thayer, Braintree.
Benjamin Fisher, Dedham.
Samuel Davenport, Milton,
Joseph Houghton, do.
Consider Atherton, Stoughton.
Jacob Cushing, jun. Hingham.
Josiah Lane, do.
Jonathan Burr, do.

Cryer. Gentlemen, are ye all sworn?

Clerk. Prisoners, hold up your hands. Gentlemen of the Jury look upon the prisoners, and hearken to the charge. (*The Clerk then read the several indictments against them as before set forth.*) Upon each and every of these several indictments the prisoners at the bar have been arraigned, and upon their arraignment have pleaded not guilty, and for trial have put themselves upon God and their country, which country you are, your charge therefore is, to enquire whether they or either of them be guilty of the felony and murder whereof they stand indicted, or not guilty. If they or either of them are guilty, you are to say so; if they or either of them are not guilty, you are to say so and no more. Good men and true, stand together and hearken to your evidence.

Counsel for the Crown.

Robert Treat Paine, Esq. and Samuel Quincy, Esq.

Counsel for the Prisoners.

John Adams, Esq. Mr. Josiah Quincy, and Mr. Sampson Salter Blowers.

Samuel Quincy, Esq. addressing himself to the Court and Jury, opened the cause in the following words:

May it please your Honors, and you Gentlemen of the Jury.

THE prisoners at the bar, are that party of soldiers belonging to his Majesty's 29th regiment, who in the evening of the 5th of March last, were induced from some cause or other to fire on the inhabitants of this town, in King-street.

They are charged in five distinct indictments, with the willful premeditated murder of five different persons mentioned in the respective bills; to each of these indictments, they have severally pleaded, *not guilty*; and by that plea have thrown upon the crown the burthen of proving the fact alledged against them; It is my province therefore to give you evidence in support of this charge, and yours, gentlemen of the Jury, to determine whether they are guilty, or not.

The cause is solemn and important; no less than whether eight of your fellow subjects shall live or die! A cause grounded on the most melancholy event that has yet taken place on the continent of America, and perhaps of the greatest expectation of any that has yet come before a tribunal of civil justice, in this part of the British dominions.

I am aware how difficult, in cases of this sort, it ever is, and more especially so in *these times*, and in *this trial*, to preserve the mind perfectly indifferent; but I remember, we are bound, not only by the natural obligations towards God and man, but also by an oath, to examine into the evidence of fact without *partiality* or *prejudice*; I need not therefore caution you of your duty in this respect: It is upon that evidence and the law resulting from it, you, gentlemen are, in the language of your oath, to give a verdict; and I will venture, beforehand, to pronounce that verdict *righteous*, if it is founded in these principles as the rule of your judgment.

It has become my duty, it shall therefore be my endeavour, to acquit myself in the course of this trial with *decency* and *candour*; reflecting, that however interesting the question may be, the object of our enquiry is simply that of truth, and that this enquiry is to be conducted by the wisdom of the laws and constitution.

In support of this accusation against the prisoners at the bar, it is incumbent on the crown, to ascertain the following things; viz. The indentity of the persons charged; The fact of killing; and the circumstances attending and aggravating that fact.

To this end, I shall immediately produce to you such evidence, from the testimony of credible witnesses, as may be sufficient to sustain the several indictments, and when I have gone through the examination, make such remarks upon it, as may be most concise and pertinent to the present issue.

The following witnesses were then sworn and examined in their order,

Jonathan Williams Austin—sworn.

Q. Do you know either of the prisoners at the bar? *A.* I do.

Q. Which of them?

A. M'Cauley.—I knew the man before, but did not know his name; I was afterwards told it was M'Cauley. On the evening of the 5th of March last, I heard the bells ring, and immediately went into King-street.

Q. How many people do you imagine might be there when you got into King-street?

A. There might be twenty or thirty I believe.—I saw the Sentry at the Custom-House door swinging his gun and bayonet; there were a parcel of men and boys round him. I desired them to come away, and not molest the Sentry: Some of them came off and went to the middle of the street; I then left them and went up towards the Main-Guard. Immediately a party came down, I walked by the side of them till I came to the Sentry-box at the Custom-house. M'Cauley had then got to the right of the Sentry-box; he was then loading his piece.

Q. How near was you to M'Cauley at that time?
A. I was about four feet off; M'Cauley said "*Damn you, stand off*;" and pushed his bayonet at me: I did so:—Immediately I heard the report of a gun. Q. How near did M'Cauley stand to the corner? A. He came round the Sentry-box, and stood close to it on the right. Q. When the party came down, were there many people there? A. I cannot really say, I think about fifty or sixty. Q. What did they say to the people as they came down? A. I did not hear them say any thing. Q. Did you hear any orders given? A. I did not, either to load or fire. Q. Did you hear the Sentry cry out for help to the Main-Guard? A. No; I was not there half a minute. Q. Whereabouts did you stand? A. I stood inside the gutter, close by the box. Q. Whereabout did the Sentry-box stand? A. Three or four feet from the corner of the Custom-House. Q. How many guns did you hear? A. Five or six, I cannot swear to any particular number. Q. Did you look round after you heard the guns fired? A. Yes. Q. Did you see M'Cauley then? A. Yes. Q. Was he loading again? A. I think he was; it so lies in my mind; (I cannot absolutely swear it:) Q. Do you know whether any soldiers stood on the right of M'Cauley? A. I took so particular notice of M'Cauley, that I minded no other object.

Ebenezer Bridgham—sworn.

Q. Do you know any of the prisoners at the bar? A. I particularly saw that tall man, *(pointing to Warren, one of the prisoners.)* Next day after the firing in King-street, I saw more of them whom I cannot particularly swear to now. Q. Did you see the soldiers before the justices on examination? A. Yes. Q. Did you then observe you had seen any of them the night before in King-street? A. I was well persuaded next day in my own mind, that I saw that tall one; but a few days after, I saw another man belonging to the same regiment, so very like him, that I doubt whether I am not mistaken with regard to him. Q. Were there any other of the party you knew? A. I am well satisfied I saw the Corporal there. Q. Did you see White there? A. I do not remember. Q. What was the situation of the Corporal? A. He was the corner man at the left of the party. Q. Did you see either of the persons, you think you know, discharge their guns? A. Yes; the man I take to be the tall man, discharged his piece as it was upon a level. Q. Did you see the Corporal discharge his gun? A. I did not. Q. Where did you stand? A. I was behind them in the circle. Q. What part of the circle did the tall man stand in? A. He stood next but one to the Corporal. The tall man whoever he was, was the man I saw discharge his piece. Q. Was any thing thrown at the soldiers? A. Yes, there were many things thrown, what they were I cannot say. Q. How did the soldiers stand? A. They stood with their pieces before them to defend themselves; and as soon as they had placed themselves, a party, about twelve in number, with sticks in their hands, who stood in the middle of the street, gave three cheers, and immediately surrounded the soldiers, and struck upon their guns with their sticks, and passed along the front of the soldiers, towards Royal-Exchange-lane, striking the soldiers' guns as they passed; numbers were continually coming down the street. Q. Did you see any person take hold of any of the guns or bayonets of any of the party? A. I do not remember I did. Q. Did you hear any particular words from this party of twelve? A. I heard no particular words, there was such a noise I could not distinguish any words. Q. Did they load their guns before the people surrounded them, or after? A. They were loading at the time. Q. How near did they go to the soldiers? A. Very near them, almost close to their guns. Q. Were the people who struck the guns,

there at the firing? A. I cannot say whether they had gone away or not. Q. Did you apprehend the soldiers in danger, from any thing you saw? A. I did not, indeed. Q. Where did you stand at the firing? A. I kept my place. At the time of the firing of the first gun, I heard a clattering noise on the right like one gun striking against another, and immediately the first gun was fired from the right. Q. At the time of firing that gun was any assault made on the person that fired? A. I did not see the person that fired. Q. You said, you saw several blows struck upon the guns, I should like you would make it more plain. A. I saw the people near me on the left, strike the soldiers' guns, daring them to fire, and called them cowardly rascals, for bringing arms against naked men; bid them lay aside their guns, and they were their men. Q. Did you see any person fall? A. Yes, I saw Gray fall. Q. Where was that? A. He fell in the middle of the street. Q. Was the place where he fell nearly opposite to the tall man you talk of? A. No; the gun that killed him, must have been nearer to the center. When the soldiers on the left fired, there were fewer people in the streets. Q. Did you see a molatto among those persons who surrounded the soldiers? A. I did not observe. Q. Did they seem to be sailors or town's men? A. They were dressed some of them in the habits of sailors. Q. Did you hear any bell ring? A. Yes. Q. What bell? A. I believe all the bells in town were ringing, I heard the Old South first. Q. Did the clattering or blows on the guns to the right, immediately before the first gun went off, appear very violent? A. Yes, very violent. Q. Where was the second gun fired from? A. I took it to be the person next to him who fired the first, or very near him. Q. Betwixt the first and second gun, did you see any assault given to the soldiers? A. No. Q. When the firing came along to the left, were there many people in the street? A. There were very few people then in the street. Q. What place did those few stand in? A. Right over the way. Q. Was you looking at the person who fired the last gun? A. Yes, I saw him aim at a lad that was running down the middle of the street, and kept the motion of his gun after him a considerable time, and then fired. Q. Did the lad fall? A. He did not, I kept my eye on him a considerable time? Q. This soldier was towards the left you say; was he quite to the left? A. Not quite, but towards it. Q. Was the lad among the party that struck at the soldiers? A. He was passing the street, I cannot say where he came from. Q. After the firing of the first gun did the people disperse? A. They drew away down Royal-exchange-lane, but others were coming continually down the street; but when the first person was killed, they seemed all to draw off. Q. Did the people that came down the street, endeavour to join the party that was striking the soldiers, or did they come because of the ringing of the bells? A. I believe they came because the bells were ringing, for they came from all parts of the town, and did not appear to me to join in the assault. Q. How many guns were fired? A. I believe seven. Q. How many soldiers were of the party? A. I did not count them, but I believe twelve.

James Dodge—sworn.

Q. Do you know either of the prisoners? A. Yes, I know Warren, and saw him with the party in King-street on the evening of the 5th of March last. Q. Do you know any of the rest? A. I know them all by sight, but that is the only person I can swear to. Q. The night of the firing, did you see the Corporal there? A. Not so as to know him; but Warren I can swear to. Q. Did you see him discharge his piece? A. No; I went away when the first gun fired. Q. Where

did the person stand, who fired the first gun? *A.* He stood towards the left of the party. Q. Whereabout did you stand yourself? *A.* Opposite the soldiers, by Mr. Warden's shop the barber. Q. Did you see any body fall? *A.* I saw none fall. I went off when the first gun was fired, and came back again and heard there were three men killed. Q. Do you mean the first gun was fired from your left, or from the left of the party? *A.* From the left of the party; there were two stood to the left of Warren. Q. What appeared to be the conduct of the soldiers before the firing? *A.* When I got there, they were swinging their guns backward and forward, and several among the people, said, fire, damn you fire; but I think it was Capt. Preston that gave the word to fire. Q. How many people were there? *A.* I took them to be about fifty. Q. What had they in their hands? *A.* They had nothing in their hands. Q. Did you see any ice or snow-balls thrown at the soldiers? *A.* I saw several snow-balls and pieces of ice thrown, and heard a rattling against the barrels of their guns, whether it was sticks, or what, I do not know. Q. Where did the snow-balls seem to come from? *A.* From the people right before the party. Q. Did the snow-balls seem to be thrown in anger? *A.* I do not know; I saw the soldiers pushing at the people before any snow-balls were thrown. Q. Were the people pressing on? *A.* They were very near, within reach of their bayonets. Q. Did you see any oyster-shells thrown? *A.* No. Q. Was the snow trodden down, or melted away by the Custom-House? *A.* No, the street was all covered like a cake.

Samuel Clark—sworn.

Q. Did you see any of the prisoners in King-street on the 5th March? *A.* Yes, before the affray happened. Q. Which of them was it? *A.* It was White. He was standing sentry at the Custom-House: he spoke to me, and asked me how we all did at home. I immediately went home. Soon after I heard the bells ring, and went into King-street. When I came there, the soldiers were drawn up by the Main Guard. Q. Was you there at the time of the firing? *A.* I was not. Q. When you spoke to the sentry, was there any body with him? *A.* No, he was walking backwards and forwards by himself.

Edward G. Langford—sworn.

I am one of the Town watch. Q. Was you in King-street that evening the 5th March? *A.* Yes. The bells began to ring, and the people cryed fire: I ran with the rest, and went into King-street; I asked where the fire was; I was told there was no fire, but that the soldiers at Murray's barracks had got out, and had been fighting with the inhabitants, but that they had drove them back again. I went to the barracks, and found the affair was over there. I came back, and just as I got to the Town pump, I saw twenty or five-and-twenty boys going into King-street. I went into King-street myself, and saw several boys and young men about the sentry-box at the Custom-House. I asked them what was the matter. They said the sentry had knocked down a boy. They crowded in over the gutter; I told them to let the sentry alone. He went up the steps of the Custom-House, and knocked at the door, but could not get in. I told him not to be afraid, they were only boys, and would not hurt him. Q. Do you know the sentry? A. Yes. Q. Is he among the prisoners? *A.* Yes, that's he. (Pointing to White.) Q. Do you know any of the rest? *A.* Yes, that man. (Pointing to Killroy.) The boys were swearing and speaking bad words, but they threw nothing. Q. Were they pressing on him? *A.* They were as far as the gutter, and he went up the steps and called out, but what he said I do not remember. Q. Did he call loud? *A.* Yes, pretty loud.

Q. To whom did he call? A. I do not know; when he went up the steps he levelled his piece with his bayonet fixed. As I was talking with the sentry, and telling him not to be afraid, the soldiers came down, and when they came, I drew back from the sentry, towards Royal-exchange-lane, and there I stood, I did not see them load, but somebody said, are you loaded; and Samuel Gray, who was shot that night, came and struck me on the shoulder, and said, Langford, what's here to pay? Q. What said you to Gray then? A. I said I did not know what was to pay, but I believed something would come of it by and bye. He made no reply. Immediately a gun went off. I was within reach of their guns and bayonets; one of them thrust at me with his bayonet, and run it through my jacket and great coat. Q. Where was you then? A. Within three or four feet of the gutter, on the outside. Q. Who asked, are you loaded? A. I do not know whether it was the soldiers or inhabitants. Q. Did you hear the word given to load? A. I heard the question asked, whether they were loaded? but I heard no orders to load. Somebody then said, are you all ready? I then heard the word given to fire, twice distinctly. Q. How many people were there before the soldiers at that time? A. About forty or fifty, but there were numbers in the lane? Q. Were they nigh the soldiers? A. They were not in the inside of the gutter. Q. Had any of the inhabitants sticks or clubs? A. I do not know. I had one myself, because I was going to the watch, for I belong to the watch. Q. How many soldiers were there? A. I did not count the number of them, about seven or eight I think. Q. Who was it fired the first gun? A. I do not know. Q. Whereabout did he stand that fired? A. He stood on my right, as I stood facing them: I stood about half way betwixt the box and Royal-Exchange-lane. I looked this man (*pointing* to Killroy) in the face, and bid him not fire; but he immediately fired, and Samuel Gray fell at my feet. Killroy thrust his bayonet immediately through my coat and jacket;—I ran towards the watch-house, and stood there. Q. Where did Killroy stand? A. He stood on the right of the party. Q. Was he the right hand man? A. I cannot tell. I believe there were two or three on his right, but I do not know. Q. You spoke to him you say before he fired, what did you say to him? A. I said either damn you, or God damn you do not fire, and immediately he fired. Q. What in particular made you say do not fire? A. Hearing the other guns go off. Q. How many guns went off before he fired? A. Two: but I saw nobody fall. Gray fell close to me. I was standing leaning on my stick. Q. Did Gray say any thing to Killroy before he fired? A. He spoke to nobody but me. Q. Did he throw any snow balls? A. No, nor had he any weapon in his hand; he was naked as I am now. Q. Did you see any thing thrown? A. No, I saw nothing at all thrown of any kind. Q. Was you talking with Gray at the time the gun went off? A. I did not speak with him at that instant, but I had been talking with him several minutes before that. Q. Was you so near Gray, that if he had thrown any thing you must have seen it? A. Yes, his hands were in his bosom, and, immediately after Killroy's firing, he fell. Q. Did you hear any other gun at that time? A. None, till I had got near to the watch-house. Q. How near were the people standing to the soldiers, at the time that gun shot Gray? A. They were standing near the gutter. Q. Did you see any thing hit the soldiers? A. No, I saw nothing thrown. I heard the rattling of their guns, and took it to be one gun against another. This rattling was at the time Killroy fired, and at my right, I had a fair view of them; I saw nobody strike a blow nor offer a blow. Q. Have you any doubt in your mind that it was

that gun of Killroy's that killed Gray? A. No manner of doubt; it must have been it, for there was no other gun discharged at that time. Q. Did you know the Indian that was killed? A. No. Q. Did you see any body press on the soldiers with a large cord wood stick? A. No. Q. After Gray fell, did he (Killroy) thrust at him with his bayonet? A. No, it was at me he pushed. Q. Did Gray say any thing to Killroy, or Killroy to him? A. No, not to my knowledge, and I stood close by him. Q. Did you perceive Killroy take aim at Gray? A. I did not: he was as liable to kill me as him.

Francis Archibald—sworn.

Q. Did you see any of the prisoners in King-street, that evening of the 5th of March. *A.* Yes, I saw Killroy go down with the party towards the sentry. Q. How many of them? *A.* I took them to be six, besides the Corporal. Q. Did you see any of the rest there that you knew? *A.* No. Q. Did you see any of them fire? *A.* No, I was not near them; I went to Stone's door. Q. Did you see any snow balls or sticks thrown? *A.* No. Q. Was you looking at the party and the people by them before the firing; *A.* Yes. There was a noise amongst them; I was not near enough to hear what was said, but I saw nothing thrown. Q. Where was you when the party came down? *A.* Near the middle of the street. Q. Did you observe the party to divide themselves? *A.* No; the corporal walked in front of them, as he always does at a relief. Q. Do you know who rung the bell at the Brick meeting house? *A.* No. Q. Did you see any body get in at the windows of the Brick meeting house. *A.* No. In Cornhill somebody said ring the bell, but who it was I do not know. Q. Which bell rung first? *A.* The Old Brick, I believe. Q. Did you see what passed betwixt the soldiers and others at the barracks? *A.* About ten minutes after nine, I saw a soldier, and a mean looking fellow with him, with a cutlas in his hand; they came up to me; somebody said, put up your cutlass, it is not right to carry it at this time of night. He said damn you, ye Yankee boogars, what's your business: he came up to another that was with me, and struck him. We beat him back, when seven or eight soldiers came out of the barracks, with tongs and other weapons; one aimed a blow at a young fellow, John Hicks, who knocked the soldier down. As he attempted to rise, I struck him down again, and broke his wrist, as I heard afterwards. I went to King-street, and when the guns were all fired, I saw several persons dead.

N. B. The Court being unable to go through this trial in one day, the King's Attorney and the prisoners' consented to the Court's adjourning over night during the Trial, the Jury being kept together in the mean time, by proper officers appointed and sworn by the Court for that purpose.

Five o'clock P. M. the Court adjourned to next morning, *Wednesday*, nine o'clock

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WEDNESDAY, nine o'clock, the Court met according to adjournment, and proceeded.

James Brewer—sworn.

Q. Please to look upon the prisoners, do you know any of them? *A.* I think I remember this man (pointing to Killroy.) Q. Was you in King-street the fifth of March last? *A.* Yes, in the evening. Q. Please to inform the Court and Jury what you saw there? *A.* I came up Royal-exchange-lane, and as I got to the head of it, I saw the sentry on the steps of the Custom-house, with his bayonet breast high, with a number of boys round him:—I called to him, and said, I did not think any body was going

to do him harm. I saw Capt. Preston and some soldiers come down. Q. Which of the prisoners was the sentry? A. I cannot tell, I was not so nigh him as to know his face. Q. How many boys were there round him? A. I think about twenty. Q. How old were these boys? A. About fourteen or fifteen years old, perhaps some of them older, I saw no men there except one, who came up Royal-exchange-lane with me, thinking it was fire. He went back again. Q. What did you take to be the reason that the sentry charged his bayonet? A. I could not tell what the reason was; there was nobody troubling him. I was at the corner of Royal-exchange-lane, and a young man went up to the sentry and spoke to him; what he said I do not know. Q. Was you there at the time of the firing? A. Yes, I went towards the sentry-box, there I saw Capt. Preston. I said to him, Sir, I hope you are not going to fire, for every body is going to their own homes. He said I hope they are. I saw no more of him. He immediately went in amongst the soldiers. Q. What number of soldiers were there? A. I think seven or eight, I did not count them. Q. Did Capt. Preston lead or follow them down? A. I think he was upon the right of them. As they came down they had their guns charged breast high. I saw Christopher Monk, who was wounded that night, I turned to speak to him, and directly they fired, and he seemed to faulter. I said, are you wounded, he said yes. I replied, I do not think it, for I then apprehended they fired only powder. Q. Was it the first gun that you thought wounded Monk? A. No. Q. Did you see any of these prisoners there? A. I think I saw Killroy, and that he was the man who struck me with his bayonet, when they came down before they formed. Q. Did any body near you do any violence to him? A. No, I saw none. Q. Had you seen Monk that evening before? A. No, nor the day before. Q. How near were you to the soldiers when they fired? A. I was about ten or fifteen feet from them, I stood in the street just above Royal-exchange-lane, about six or seven feet from the gutter. Q. Could you see the whole party? A. Yes, they stood in a circle, or half moon Q. Did you take notice of the distance betwixt the first and second gun? A. No. Q. Was your back to them, when the first gun was fired? A. No, my face was to them. Q. Where did the firing begin? A. Towards the corner of Royal-exchange-lane, I think it was the man quite on the right. Q. Did you know him? A. No. Q. Did the man that struck you do it on purpose, or accidentally, do you think? A. I think he did it on purpose, I apprehended it so; I was standing by the gutter, and he was before me. Q. Said he any thing to you? A. No, nor I to him: he came to form, and I was closer than I wished I was, and he struck me. Q. How came you to speak to the sentry, and tell him not to be afraid? A. Because he was swinging his gun in that manner. Q. Did you come up Royal-exchange-lane? A. Yes. I saw Doctor Young there, and several others coming up to know where the fire was, Doctor Young said it was not fire, but that the soldiers had made a rumpus, but were gone to their barracks again. Then said I let every man go to his own home. Q. Did you see any thing thrown at the soldiers? A. No. Q. Did you hear any body call them names? A. No. Q. Did you hear any threatening spheeches? A. No; except that the people cried fire! fire!—the word fire, was in every body's mouth. Q. Just before the firing, when Killroy struck you, was there any thing thrown at the soldiers then? A. I saw nothing. Q. Was there a number of people betwixt you and the soldiers? A. Not many. Q. Did you see Palmes talking with Capt. Preston? A. No; I saw the mulatto fellow there, and saw him fall. Q. Did you see a party of people like sailors,

coming down from Jackson's corner, with sticks? A. No, I saw none, Q. Where did you first see the mulatto? A. He was just before me by the gutter. Q. Did you see any people coming from Quaker-lane with sticks? A. I saw several inhabitants coming through that lane but I saw no sticks. Q. Were there any coming up Royal-exchange-lane? A. Yes, numbers, but I saw no sticks. Q. When you first saw the mulatto, did you hear him say any thing to the soldiers, or strike at them? A. No. Q. Had he a stick or club? A. I did not take notice. Q. Did you hear any huzzas or cheers as they are called? A. I heard a clamour of the people, but I heard no cheers. Q. Did you hear them call the soldiers any names? A. No. Q. Did you hear any body say, kill them, damn them knock them over? A. No. Q. Did you hear the whistling about the streets at that time? A. No. Q. Did you see any person strike with a club at the soldiers or any of them? A. No. Q. Did you see them attempt to strike their guns? A. No. Q. Did you hear the rattling of the guns as though a stick had struck upon them? A. No. I heard the people around call fire. Q. Did you take that to be the cry of fire, or bidding the soldiers fire? A. I cannot tell now what I thought then? Q. How many guns did you hear fired? A. I think seven. Q. Did the word fire proceed from the people or from the soldiers? A. From the people. Q. Was there a greater noise than usual, when the bells rang for fire?" A. I did not think there was so much. When I saw Dr. Young, he had a sword in his hand. When I came to King-street it was as quiet as I ever saw it in my life. Q. Was the sword naked or not? A. I cannot remember. Q. What sort of a sword was it? A. I do not remember. Q. What did Young say to you? A. He said it was the best way for every body to go home. Q. Did any body huzza for King-street? A. No. I said, every man home, and the word went round. Q. Did not Dr. Young say the soldiers were beat to their barracks? A. No; He said they had made a rumpus, and were gone to their barracks. Q. Do you know if Dr. Young went into King street? A. I cannot tell, I left him in the lane.

James Bailey—sworn.

Q. Did you see any of the prisoners in King-street on the evening of the 5th of March last? A. Yes. Q. Which of them? A. Carrol and Montgomery, and White who was the sentry there. Q. Did you see any of the rest? A. No, I do not remember to have seen any of the rest? Q. Was you there before the party came down? A. Yes. Q. In what part of the street did you stand? A. I was standing along with the sentry, on the Custom-house steps; I saw a number of boys round the sentry. Q. What number? A. Twenty or thirty. Q. Were they all boys? A. Yes, none more than seventeen or eighteen years old. Q. Did any thing pass between you and the sentry? A. Yes, When I first went up to him, I said what is the matter?—he said he did not know.—The boys were throwing pieces of ice at him, and after I went to him, they threw no more; I stood with him five or six minutes. Q. Did you see the pieces of ice thrown? A. Yes. Q. What sort of pieces, were they small, or were they big enough to hurt a man? A. Yes, hard and large enough to hurt any man; as big as one's fist? Q. Did he complain any thing about it? A. He said very little to me, only that he was afraid, if the boys did not disperse, there would be something very soon, he did not mention what. Q. Did he tell them to disperse? A. No, he did not say a word to them. Q. Did you see any of the pieces of ice hit him? A. There was nothing thrown after I went to him; if any thing

was thrown, it was before. Q. How came you to go to him? A. I went up to him because I knew him, and to see what was the matter. Q. Did you hear him knock at the door? A. No. Q. Did he call for any assistance? A. I did not hear him. Q. Was you there at the time of firing; please to recollect the circumstances? A. When the soldiers came down, Carrol came up to me and clapt his bayonet to my breast, and White said, do not hurt him. Q. Was that before the soldiers had formed? A. Yes; immediately on their first coming down, I stood betwixt the corner of the Custom house and the post there, with my arm a top of the post. Q. Did you hear the first gun fired? A. Yes, Q. From what quarter? A. From the right. Q. Do you know the man that fired that gun. A. It was Montgomery, he was the very next person to me, close to me. When White told him not to hurt me, he took his hand and pushed me right behind him. Q. Did that first shot kill or wound any person? A. I do not know. Q. What space of time was it betwixt the first and second gun? A. Half a minute, or less. Q. Did you see any ice or snow thrown betwixt the first and second gun? A. No. Q. Did you hear any thing said? A. There was a noise among the inhabitants, but I cannot say what they said. Q. Did you see any thing thrown before the firing? A. Yes, Montgomery was knocked down with a stick, and his gun flew out of his hand, and when he recovered himself he discharged his gun. Q. Do you know where he stood at that time? A. He was the very corner man, on the right, close to me. Q. Who stood next him! A. I do not know, but the man that stood the third from the right was Carrol, and I believe he was the next that fired. Q. Did you observe any body strike Montgomery, or was a club thrown? A. The stroke came from a stick or club that was in somebody's hand, and the blow struck his gun and his arm.—Q. Was he knocked down, or did the gun only fly out of his hand?—A. He fell I am sure. Q. What, with the blow on his arm? A. His gun flew out of his hand, and as he stooped to take it up he fell himself; the blow struck his arm and might hit his body, for any thing I know.—Q. Did you see the person that struck him; was he a tall man? A. He was a stout man. Q. Was any number of people standing near the man that struck his gun? A. Yes, a whole crowd, fifty or sixty. Q. When he took up his gun and fired, which way did he present? A. Towards Stone's tavern, I imagine he presented towards the Mulatto. Q. How far distant was he from Montgomery when he fell? A. About fifteen feet. Q. Did you see any of the rest of the persons fall? A. No, when Montgomery fired, I stooped down, and when the smoke was gone, I saw three lying dead. Q. Was the blow Montgomery received, upon the oath you have taken, violent? A. Yes, very violent. Q. When you came to the Custom-house, and saw the boys throwing ice, where did they stand? A. In the middle of King-street. Q. Were they thrown as hard, as they could throw them! A. I believe they threw them as hard as they could. Q. Was there at that time a good deal of ice in King-street? A. Yes, considerable broken ice. Q. Before the firing, after the party came down, did you see any snow balls, sticks, or ice, thrown at the party? A. No. Q. Did you hear any thing said to the party? A. I heard nothing in particular said to them.—I heard the cry of fire. Q. Did you hear any threats? A. No, none at all. Q. Do you remember your examination before the Justices? A. Yes. Q. Do you remember your saying they were throwing sticks and cakes of ice, in the mob way? A. No, not at the soldiers. Q. Did you hear any cheers? A. Yes, I heard two or

three cheers. Q. What time? A. About two minutes before they fired. Q. Did you hear any thing said to the purpose, knock them over! kill them! kill them!? A. No, I did not. Q. What did the people seem to be doing? A. They stood front of them, and were shouting; but I saw no violence done, but to that one man. Q. What did the people do immediately on the firing of the first gun? A. I could not see because of the smoke. Q. Did Montgomery say any thing upon the firing of his gun? A. Not a word: nor any of the soldiers. Q. Did you see a number of persons coming up Royal-Exchange-lane, with sticks? A. No, I saw a number going up Cornhill, and the Mulatto fellow headed them. Q. Was this before the guard came down or after? A. It was before the guard came down. Q. How many might there be of the party? A. Betwixt twenty and thirty: they appeared to be sailors; some had sticks, some had none. The Mulatto fellow had a large cord-wood stick. Q. Did they come down King-street afterwards? A. I did not see them come down. I did not see the Mulatto afterwards, till I saw him dead. Q. Which way was the Mulatto with his party going, when you saw them? A. Right towards the Town-pump. Q. Which way did you go into King-street? A. I went up Royal-Exchange-lane. Q. How long before the firing, was it, you saw them in Cornhill? A. Six, seven, or eight minutes, I believe. Q. Were the bells ringing then? A. Yes. Q. What did the party with the Mulatto do or say? A. They were huzzaing, whistling and carrying their sticks upright over their heads. Q. What number of sticks do you suppose might be in the whole? A. Seven or eight I suppose; some of them whistling, some huzzaing and making a noise. Q. Did you know their design? A. I did not; when they went up Cornhill, I went up Royal-exchange-lane. Q. Did you see any soldiers about that time in the street? A. Yes, I saw a number at Murray's barracks, and some officers driving them in.

Richard Palmes—sworn.

Q. Do you know any of the prisoners? A. I know Montgomery, I saw him in King-street with the party on the evening of the 5th of March last. I was with some gentlemen in company, I heard the bells ring after 9 o'clock; I went into King-street, and I saw the sentry at the Custom-house door as usual, and no body with him: when I came to the Town-house, I was told the soldiers were abusing the inhabitants; I asked where, and was told at Murray's barracks. I went down there and saw four or five soldiers, with their guns and bayonets; I told the officer who stood by, I was surprised they suffered the soldiers to be out at that time of night; an officer said, do you pretend to teach us our duty, sir.—I said no, only to remind you of it: You see, says he, the soldiers are in the barracks, why do not you go home. I saw Mr. Hickling, he was my neighbor, he said he was going home, we came up as far as the post-office, where he left me; then I saw Mr. Spear, he said he was going to his brother David's; when I got to the town pump, I heard a noise, and was told there was a rumpus at the Custom-house; I said, I will go down and make peace, he said, you had better not go. I left Mr. Spear and went down, and saw Capt. Preston at the head of seven or eight soldiers, with their guns, and bayonets fixed; I went to Capt. Preston, and saw Mr. Theodore Bliss talking with him, who said to Capt. Preston, "Why do you not fire—God damn you fire." I stept betwixt them and asked Capt. Preston if the soldiers were loaded, he said yes, with powder and ball; I said, I hope sir you are not going to fire upon the inhabitants, he said by no means: That instant I saw a piece of ice strike Montgomery's

gun, whether it sallied him back, or he stepped one foot back, I do not know, but he recovered himself and fired immediately. I thought he stepped back and fired, he was the next man to Capt. Preston, he only soldier that was betwixt the Captain and the Custom-house. When he fired I heard the word fire, who gave it I do not know. Six or eight seconds after that, another soldier on the Captain's right fired, and then the rest, one after the other, pretty quick; there was an interval of two or three seconds between the last gun but one and the last. Q. How many guns were fired? A. I do not know certain, seven or eight I believe, I did not count them. Before the last gun was fired, Montgomery made a push at me with his bayonet, I had a stick in my hand, as I generally walk with one, I struck him and hit his left arm, and knocked his gun down; before he recovered I aimed another stroke at the nearest to me, and hit Capt. Preston, I then turned and saw Montgomery pushing at me again, and would have pushed me through, but I threw my stick in his face, and the third time he ran after me to push at me again, but fell down, and I had an opportunity to run down Royal-Exchange lane.—— Q. Did you take notice of the situation of the soldiers? A. I saw the form they were in, they were formed in a half circle. Q. Which way did Montgomery front? A. He fronted the watch-house. Q. Did you stand in a range with the watch-house and the corner of the Custom-house? A. Yes. Q. Are you certain that Montgomery was struck and sallied back before he fired? A. Yes. Q. Do you know whether it was with a piece of ice or a club? A. No. Q. Do you know whether it hit his body, or his gun, or both? A. It struck both, I suppose. Q. Did you see any other violence offered, except that which struck Montgomery, and the blows you aimed and gave?—— A. No, no other. Q. Are you sure Montgomery did not fall just before he discharged his gun? A. Yes. Q. Upon the firing the first gun did the people seem to retire? A. Yes, they all began to run, and when the rest were firing they were a running. Q. Did you see any of the deceased fall? A. No, I did not, but afterwards I saw Gray and Attucks lying. Q. Did you see all the rest of the soldiers discharge their pieces? A. I saw the smoke, and it appeared to me at that time they all fired. Q. When the last gun was fired, where were the people? A. They were running promiscuously about every where.

Court. Call James Bailey again.

Q. Have you heard Mr. Palmes' testimony? A. Yes. Q. Are you satisfied, notwithstanding what Mr. Palmes says, that Montgomery was knocked down by a blow given him immediately before he fired?— A. Yes, I am. Q. Did you see any of the prisoners at the Rope-walks in the affray there, a few days before the 5th of March? A. Yes, I saw Carrol one of the prisoners there with other soldiers in that affray.

John Danbrooke—sworn.

Q. Do you know any of the prisoners? A. Yes, the two furthest men, Hartegan and Carrol. Q. Did you see them in King-street the 5th of March? A. Yes. Q. What time did you come into King-street? A. About a quarter after nine, after the party were come down. Q. Were these two men of the party? A. Yes. Q. Was you there at the time of the firing? A. Yes. Q. Did you see any of the party discharge their muskets? A. Yes, Montgomery.— Q. Did you know him before? A. No. Q. Did you see anybody strike him with a stick, or a stick thrown at him? A. No. Q. Whereabouts did you stand? A. About ten or twelve feet from Capt. Preston; I

saw a little stick fly over their heads, but I did not perceive it struck any of them. Q. How large was it? A. I took it to be a piece of a rattan. Q. Did you see any thing at all hit the soldiers? A. No, I did not. Q. Was you looking at Montgomery when he discharged his piece? A. Yes. Q. Did you see any body fall upon his firing? A. Yes, I saw two fall, one fell at my elbow, another about three feet from me. I did not hear the sound of another gun before they both fell. Q. Were they standing before Montgomery? A. Yes, about twelve or fifteen feet from him, and about five feet apart, one was a mulatto, the other I did not know. Q. Do you think one gun killed both these men? A. Yes, for I heard no other gun when they fell. Q. Are you certain the other person was killed? A. Yes. Q. Did you hear any other gun before that man fell? A. No. Q. Did the Mulatto say any thing before the gun went off? A. I heard him say nothing. The Mulatto was leaning over a long stick he had, resting his breast upon it. Q. Was you in Dock square before the firing? A. Yes. Q. How many people did you see there? A. I saw about twenty or thirty gathered up by the Town pump in the market, some with clubs; they went up Cornhill, most of them drest in sailors' cloaths. Q. Did you then know where they were going? A. They said let us go up to the Town-house. The bells were ringing at that time. Q. Had they in general clubs? A. The biggest part of them had clubs. Q. Did you see any of them afterwards in King-street? A. No, not that I knew. Q. Did you see a tall man at the head of them? A. No, I took notice of none in particular. Q. Did you hear a huzzaing before the firing, or see any thing thrown except that stick you mentioned? A. No. Q. Had these persons when they were in Dock square, any clubs? A. About half of them had sticks; there were between twenty and thirty of them. Q. Did they hold them up over their heads? A. Some did and some did not.—Q. Did you see any body with a sword, at the bottom of Royal-exchange lane? A. No, I did not. Q. Did you see any soldiers there about that time? A. No. Q. What do you mean by clubs? A. They were cord wood sticks broken up. Q. Did any of them appear to be large? A. They were about as thick as one's wrist.

Jedediah Bass—sworn.

I came up Royal-exchange lane, and the first I saw was Montgomery, I saw him pushing his bayonet. Q. Did you know Montgomery then? A. Yes; I drew back about five feet, and I saw his gun go off. Q. Where did Montgomery stand? A. At the corner of Royal-exchange lane, the right hand man of the party. Q. Who did he push at? A. I cannot tell. Q. How long after that before his gun went off? A. About a minute. Q. Had any thing happened betwixt that and the firing? A. I saw a stick knock up his gun. Q. Do you know who it was knocked it up? A. No. Q. How near did you stand to him? A. About five feet off, within Royal-Exchange lane. Q. Did that stick knock up his gun before he fired? A. Yes. Q. Did he bring it down before he fired? A. He brought it down to the place where it was before, and then he fired. Q. Was you looking at him all the time before he fired? A. Yes. Q. Are you certain he did not fall before he fired? A. Yes. Q. Are you sure, if he had fallen; you must have seen him? A. Yes, from my situation I think I must have seen him. Q. What sort of a stick was it his gun was knocked up with? A. It looked like a walking stick. Q. Did you see him fall after he

fired? A. Yes. Q. What occasioned his fall? A. I cannot tell. Q. Did you see any body strike him, or at him? A. No. Q. Did his gun fall out of his hand? A. I think it did. Q. Are you sure that was before, or after his firing? A. After his firing. Q. How near were the people to him at the time of his firing? A. Seven or eight feet off. Q. Did you see any other of the prisoners there that night? A. Not to my knowledge. Q. Did you stay till all the guns were fired? A. Yes. Q. How many were fired? A. Six, I think, but I did not count them. Q. At the place where you stood, could you see all the soldiers? A. No, only two, they stood in a circular form. Q. After the first gun was fired, did not the people begin to to run down the lane? A. Yes. Q. Did you hear any words spoke by the party of soldiers, or any of them? A. No. Q. How long did you continue there? A. About five minutes, not longer; until all the guns were fired. Q. Did you come from Dock-square up to King-street? A. Yes. Q. Did you see any people there? A. I saw about twenty. Q. What were they doing? A. They were talking about going home. Q. Were the bells ringing? A. Yes. Q. Did they mention any thing why the bells were ringing? A. They said first it was fire, and then that the soldiers were out. Q. Did you hear any cheers given in King-street? A. I think I did before they fired. Q. How many? A. Two I think. Q. Who gave them? A. The town's people. Q. How long before the firing? A. About two minutes before the firing. Q. How were the people drest in Dock-square? A. Some in sailor's clothes, some in surtouts. Q. Had they sticks? A. Some had, some had not. Q. Did you hear them mention their going to the Town-house? A. No.

Thomas Wilkinson—sworn.

Q. Do you know either of the prisoners? A. Yes, I know Montgomery, he used to live close by my house; I know none of the rest. I was at home the whole evening, the Old South bell rung for nine as usual; about a quarter after, I heard Mr. Cooper's bell ring, I went out and saw the Old South engine hauled out. I ran down as far as the town-pump, there seemed to be a considerable body of people, and some with buckets. The people out of the chamber windows, said, do not go down there, you will be killed.—I saw ten or twelve soldiers with naked cutlasses by Boylston's alley.—I saw them with their cutlasses and bayonets drawing up towards the people. I went back and stopped at the Main Guard. Q. Were there a number of the town's people there at that time? A. Yes, and many with buckets in their hands. Q. Were they contending with any body? A. No, they were standing in the street. Q. What were the soldiers doing? A. They were brandishing their swords and sallying up to the people, but I did not tarry there one minute. Q. What number of people were there? A. Thirty or forty. Q. Had the persons the soldiers came up to, any thing in their hands? A. No, they had nothing but buckets. I took it they were brandishing their swords at the people, but I saw them strike nobody. I went to the Main Guard, I saw the Sentries before the Guard house, walking as usual. I staid on purpose to see somebody come back from Boylston's alley, to know if any were wounded. People were coming down from the South end, crying where is the fire? Where is the fire? I said there is no fire, but the soldiers fighting. At that time, in King street, I do not think you could see a man, child, or boy passing. I stood there at the Main Guard about four minutes.—The Old Brick bell began to ring,

and the people seemed to come along fast, with buckets and bags. Q. Did Mr. Cooper's bell ring before? A. Yes, a good while. Q. Could you see the Sentry at the Custom House where you stood? A. No, I staid there about five minutes, and in a very short time I looked down King street, and saw thirty or forty people in King street; Capt. Preston came down to the Main Guard, as it were from behind the Brick meeting, and said turn out, damn your bloods, turn out: A party of soldiers turned out, Montgomery was amongst them; I was going to Montgomery, to ask what they were going to do?—They drew up in two files, I think there were eight men, Capt. Preston drew his sword, and marched down with them, and I went down as far as Mr. Waldo's shop with them, I thought they were going to relieve guard. After that, I went up by the Main Guard again, having left the soldiers on their march down from Waldo's shop, and passed round the Town House, came down the north side of it, and went down King street, and got within two yards of the right of them; I saw Capt. Preston standing at the right of the circle, I staid there about four minutes, when I heard the word given, fire!—There was none fired then.—Then I heard, damn your bloods, fire! Instantly one gun went off, I saw the flash of every gun as they went off, one after another, like the clock striking. Q. Where did the firing begin? A. It began at the right. Q. Did you see Montgomery after he got down there? A. No. Q. Where did you stand when the guns were fired? A. I stood about two yards to the right, in Royal-Exchange lane, and towards the back of the soldiers; I am positive the firing began at the right and went on to the left. I counted the guns. Q. How many were fired? A. Seven fired, and one flashed. Q. Was there a longer distance betwixt the first and second gun, than betwixt the rest? A. No more than the rest, I think. Q. Did you see any man fall? A. I did not. There was a large opening at the centre, but on the right and left wings the crowd was close and thick. Q. Could you see all the soldiers? A. No, I could not, there were many people between me and the soldiers. Q. Did you see the person who held the gun that flashed? A. Yes, but did not know him. Q. Whereabouts was he standing? A. I believe, by the flash, he was the third or fourth man from the right. Q. Did you see any thing thrown at any of them before the firing? A. No, I stood all the time they were there, and saw nothing thrown at all. Q. Did you see any body knocked down? A. No. Q. You saw no ice nor snow balls? A. No, I did not. Q. Did the people round you seem to be pressing on so as to injure the soldiers? A. No; had I seen any thing thrown, I would have gone away. Q. Did you see any blows given by any body, before or after the firing? A. No, I did not. Q. Do you know Mr. Palmes? A. No, I saw a man talking with the officer. Q. Do you know Mr. Bliss? A. No. Q. Did you hear any huzzaing? A. Yes, before the party marched down, there were two or three huzzas, but afterwards none at all. Q. How many people do you imagine were there? A. Sixty or seventy. Q. From the time they went from the Main Guard, till the firing, how long was it? A. It was not more than ten or twelve minutes.

Josiah Simpson—sworn.

Q. Do you know either of the prisoners? A. Yes, White. Q. Do you know either of the rest? A. Yes, Wemms. Q. Do you know any other? A. Yes, Warren and Hartegan, I saw them there that night under arms. On Monday evening, 5th of March, I was at work near Hancock's Wharf, hearing a bell ring it caused me to leave the shop

to make inquiry what the matter was; I heard the soldiers had rose on the inhabitants, and I got as far as Fanuiel-Hall. I saw several gentlemen, I asked them what the matter was, they answered me that, two young men had been abused by the soldiers, but that they had returned to their barracks. The bells still ringing made me proceed up Royal-Exchange lane with a number of other persons: I outrun them and came to the head of the lane, there being no person there but a soldier who was the Sentry, the other inhabitants coming up, they cried out there is a soldier and huzzaed. The soldier immediately repaired to the Custom House door, he was at the west corner of the house before; there, with a large brass knocker, gave three loud and remarkable strokes. Q. What number of persons were there came up immediately after you? *A.* Five or six. Somebody came to the door and opened it, and spoke to the Sentry, and then shut the door again. Q. What was said to him? *A.* I did not hear. The soldier then turned about and loaded his gun, and knocked it twice very loud on the steps; then he went to the west corner of the house where he had been before, the people gathered round him; I went with him, and I cast my eye up King-street, and saw an officer and seven men, they came to the west corner of the Custom House. Q. Was any thing done to molest them then? *A.* No, nothing at all. The officer then cried shoulder. Q. Do you know who that officer was? *A.* I have seen him in the Court. Q. How many soldiers were with him? *A.* Seven. Q. How did they stand then? *A.* They stood in a circle. The officer then said, handle your arms, ease your arms, secure your arms, support your arms, ease your arms, prime and load. Q. Are you certain he said all that? *A.* I am as certain, as I am of my own existence. Q. Where did Capt. Preston stand then? *A.* He stood a little behind the soldiers towards the Custom House. There were about fifteen or twenty inhabitants in the street, when the party came down. Q. Were the soldiers formed before they loaded? *A.* They were not really formed: they were in a kind of a circle, after they had loaded they formed more into a circle than they were before. Q. Did you know Capt. Preston before that? *A.* I did not. Q. Was you there when the guns fired? A. I went up to the officer, and said for God's sake do not fire on these people—he made me no answer at all. Q. Where was he then? A. He was standing behind the soldiers. Q. Was you behind the soldiers? A. No, a little before them, at the edge of the gutter. Q. Did you see any person with him? A. No, none at all. I pushed through betwixt two of the men, and spoke to him that way, he had on a red coat and laced hat. I saw no more of him. I went to some of the inhabitants, and said, do not trouble these men, they are on duty. Some said we will neither trouble them, nor be drove off by them. Q. Did you hear any orders given for firing? A. I heard, damn you fire: it seemed to me as if it came from the sentry-box where I left the Captain. I was then by Vernon the barber's shop; I had passed across the street. I saw a man going to throw a club, I begged of him not to do it, for I said if he did, the soldiers would certainly fire: he said, he would not, and did not. I then saw a white club thrown at some distance from me towards the soldiers; immediately I heard the word *present!* I stooped down, a little space of time ensued, I heard damn you fire: two guns were discharged then, as I judged. Q. Did that club hit any body? A. I believe it hit one of the soldiers' guns, I heard it strike. Q. Was that before the firing, or after? A. Before the firing. Q. How near to the

soldiers was the person that threw the club? A. About ten yards off. Three or four more guns were then discharged, which killed Attucks and Gray, I heard and saw them fall; then two more were discharged, one of them killed Mr. Caldwell, who was about ten feet distance from me, the other struck about five inches over my back. Q. What space of time was there betwixt the second gun and the third? A. I took it to be about two or three seconds. Another gun was then fired, which wounded Mr. Patterson in the arm. Q. How long after the club was thrown was it before the first gun was fired? A. Not above one or two seconds. Q. What sort of a stick was it that was thrown? A. I took it to be a white birch cord-wood stick, an inch thick. Q. What sort of a man, for height, was he that threw it?—A. He might be about five feet and an half. Q. How do you know what number of guns were fired together? A. I judged by the report; I saw the flashes. Q. Did you see any of the persons that were killed, that evening before they were killed? A. No. Q. Upon the oath you have taken, did that man throw the stick with considerable violence, or not? A. He threw it considerably hard, he threw it over hand. Q. Were any people standing betwixt the soldiers and the man that threw that stick? A. Yes, some, but not many.—Q. Did the people make a great deal of noise and huzzaing? A. Yes, considerable. Q. Did you hear them say to the soldiers, bloody backs, come on you bloody backs? A. No, I heard no such things; but when the two first guns were discharged, some one cried murder, and by the voice I think it was Maverick. These guns killed nobody, unless Maverick was then shot.

Nathaniel Fosdick—sworn.

Q. Did you see any of the prisoners the 5th March? A. Not so as to know them again. That evening, at the cry of fire, I came out of my house, and saw the people running down town, and I followed them; when I got by the Town-house, I saw some going down King street, I went down also: at the Guard-house, I saw a number of the soldiers running; I asked where was the fire, nobody answered me. I went down to the middle of King street, and while I stood there, was pushed from behind me with a bayonet. I turned round and saw a party of soldiers coming down, I asked one the reason of his pushing at me; he damned my blood, and bid me stand out of their way, I said I would not, I was doing harm to no man, and would not stand aside for any one; they passed me some on one side, some on the other. They came to the sentry-box, faced round and formed a circle. I spoke to some of the inhabitants to speak to Preston, to know what the matter was; somebody spoke to him, but what was said, I do not know. I saw Preston fall in betwixt the fourth and fifth man, the word was given fire! immediately the right hand man fired; after that I pushed in towards them, and they run a bayonet at me and wounded me in my arm. Q. Who was it struck you? A. The second man, the first gun was then fired, the second was not; the guns went off pretty quick. Q. Was it the same soldier that struck you, pushed you in the arm? A. No. I was pushed twice in the arm by two different bayonets; I knocked off one of them with my stick, with the other I was wounded in my breast, the wound an inch long, through a double breasted jacket. Q. Were no blows given before the guns were fired? A. No, not where I stood, and I saw two thirds of the soldiers. Q. What was the occasion of your rushing in upon them after the first gun was fired? A. All my

end was to know who they were. Q. Did you wonder what was the occasion of their firing? A. Yes, I did not know what their intention was. Q. Did you see any insults offered the soldiers? A. No, none at all, I saw the right hand grenadier fall. Q. Was it before or after he had fired? A. It was after. He fell on his backside. Q. Did you see any of the people that were killed? A. Yes, I saw the Mulatto, and crossed to Quaker lane and there stepped over two more. Q. Where did the Mulatto man lay? A. By the gutter on the south side of it. Q. Did you see any of them before they were killed? A. Not as I know of. Q. What do you think was the occasion of the grenadier's falling? A. It was occasioned by his pushing at somebody that went in at Royal-exchange lane.

Samuel Hemmingway—sworn.

Q. Do you know any of the prisoners? A. Yes, several, there is Killroy I know particularly well. Q. Did you ever hear Killroy make use of any threatening expressions against the inhabitants of this town? A. Yes, one evening I heard him say, he never would miss an opportunity, when he had one, to fire on the inhabitants, and that he had wanted to have an opportunity ever since he landed. Q. How long was that before the 5th March? A. A week or fortnight, I cannot say which.—— Q. Did you ever hear any of the rest threaten any thing? A. No. Q. Who was present when this conversation passed? A. Mrs. Bouker, Mr. Apthrop's house keeper. Q. Was anybody else present? A. Only the negro boy. Q. What gave occasion for this? A. He and I were talking about the town's people and the soldiers. Q. Did he say it with any resentment? A. No otherways than he would not miss an opportunity. Q. Do you remember what conversation immediately preceded that? A. No. Q. Was he in anger? A. No. Q. Was Killroy in liquor or not? A. No. Q. Had there any angry words passed betwixt him and you at that time? A. No, none at all. Q. Was it in jocular talk? A. I do not know. I said he was a fool for talking so—he said he did not care. Q. Had Killroy said that evening, that he had been at the rope-walks. A. No, he said nothing about the rope-walks. Q. Was this conversation before or after the affray at the rope-walks? A. I cannot say.

Joseph Hiller—sworn.

Q. Do you know any of the prisoners? A. I do not. Q. Was you in King street at the time of the firing on the evening of the 5th March? A. Yes. Q. What did you observe? A. I came there about fifteen minutes before the soldiers came, I staid there till they came down, and remained there till the firing was over. Q. Narrate what happened in relation to the sentry. A. I was at the north end of the town when the bells rung, when I came to the middle of the town I was told there was no fire, but a rumpus betwixt the soldiers and the inhabitants. I passed on, the bells still kept ringing, I came to Dock-square and was informed much to the same purpose; there were some persons there, who told me it was dangerous to go up; they seemed to be like people that were afraid to pass, because of the danger; others were going up; I went up, when I got past the alley the street was very clear of people, I hardly saw anybody. I came to the Town-house, and saw a few lads, but no great number, I have often seen more collected for their diversion. Q. How many people were there? A. From twenty to thirty. I saw the sentry upon the steps of the Custom-house door, but I heard him say nothing, but he had his gun waving as if it was to defend himself, or to exasperate the people. I thought to speak to him, but I thought he might insult me, and therefore I declined; I went

in order to go away, and met the party coming down; that made me stop, because when they got to the Custom-house there was a noise something like what they call cheers, and the people went more to the middle of the street; after the soldiers had passed through them, I went down again; as I passed before them, there were very few people; I passed without the people, and inclined more to the Custom-house, the greatest part of the soldiers were full to my view; the people that were there, were collected in a body at the end of Royal-exchange lane, they did not go so high as Mr. Stone's house. Q. Where did you stand? *A.* I was walking right before them. They had their guns rested on their hips; when I passed the last man on the left, the first gun was fired from the right; as I judged, the time might be twenty seconds before the first gun was fired from the time they formed, in a short space there was another, and then very soon another, and then there was a short space of time again, before the last guns were fired. A little boy ran along and cried fire! fire! fire! as people generally do when there is fire, a soldier pointed his gun to him and fired, but did not hit him, he was the last but one on the left. Q. Did the people appear to be passing off after the first gun? A. I did not mind the first gun, I thought it was only powder to scare them; but when the next was fired, they were a scattering. After the firing ceased, a little boy came and told us some persons were killed. I saw them lie in the street, but I did not imagine it was anybody killed, but that they had been scared and run away, and left their great coat's behind them: I saw nothing like an attack that could produce any such consequences: I went to look at the Mulatto man, and heard a noise like the cocking of firelocks, but an officer passed before them, and said, do not fire on the inhabitants. The street was in a manner clear, it was as hush as at twelve o'clock at night, the noise of the cocking seemed to come from the right, and passed on to the left. Q. How many guns were fired? *A.* Six was the least, and one missed fire. Q. Did the last man on the left fire or not? *A.* He did not fire, his gun seemed to miss fire, and he brought it down in a priming posture, and a man like an officer stepped up to him and spoke to him. Q. Did you see them load betwixt the firing and this noise you speak of, like the cocking of firelocks? *A.* I did not see them load, for I did not leave my station. Q. How many soldiers were there? *A.* Six or eight. Q. Did you see any blows given, or any thing thrown? *A.* No, and I was there the whole time. Q. Did you see Palmes there, or Bliss? *A.* No. Q. Did you see anybody strike the soldiers' guns? *A.* No. Q. Did you hear any huzzaing, when the soldiers came down? *A.* There seemed to be a huzza, but when I went down and passed them they were very still, only talking together, but I heard nothing they said: the shouting was when they first went down, and it was not two minutes till they fired.

Nicholas Ferreter—sworn.

Q. Do you know any of the prisoners? *A.* Yes, I know Warren and Killroy. Q. Did you ever see them at the rope-walks? *A.* Yes, they were both at the rope-walks. Q. How long before the 5th of March? *A.* On the Friday before. Q. Did you ever hear them make use of any expressions of mischief towards the inhabitants? *A.* No, on Friday Mr. John Gray told me to go to his rope-walk to make some cables; I went and worked till about twelve, and then I saw a soldier coming down the outside rope-walk, swearing, and saying he would have satisfaction. Before this there was one of our hands while I was coiling a cable, said to a soldier do you want work, yes, says the soldier I do, faith; well, said he,

to the soldier, go clean my little-house, he damned us and made a blow at, and struck me, when I knocked up his heels, his coat flew open and out dropt a naked cutlass, which I took up and carried off with me. He went away, and came back with a dozen soldiers with him: the people that were attacked called to us for help. When they called to us, we came up; then we had several knocks amongst us, at last they went off. They all got armed with clubs, and in the afternoon they were coming again, but Mr. John Gray stopped them. Q. When they came the second time, was Killroy with them? A. Yes. Q. What did they do the second time? A. We had a battle, and they went to their barracks. On the 5th of March I went to Quaker lane, and met Samuel Gray; I said, where are you going, he said to the fire. I went into King street, and saw nobody there, the Sentry was walking as usual. We agreed to go home. I went towards home, and stopped at the bottom of Long lane, and while I was there, I heard guns go off. I went to King street, and was told several were killed, I then went home. Samuel Gray, when I saw him that night, was quite calm and had no stick.

Benjamin Burdick—sworn.

Q. Did you see any of these prisoners in King street the night of the 5th of March? A. Not that I can swear to as they are dressed. I can recollect something of their faces, but cannot swear to them. When I came to King street, I went immediately up to one of the soldiers, which I take to be that man who is bald on the head, (pointing to Montgomery) I asked him if any of the soldiers were loaded, he said, yes. I asked him if they were going to fire, he said, yes, by the eternal God, and pushed at me with his bayonet, which I put by with what was in my hand. Q. What was it? A. A Highland broad sword. Q. What occasion had you to carry it? A. A young man that boarded with me, and was at the Rope-walks, told me several of them had a spite at him, and that he believed he was in danger. I had seen two soldiers about my house, I saw one of them harkening at the window, I saw him again near the house, and asked him what he was after; he said he was pumping ship: Was it not you, says I, that was harkening at my window last night? what if it was, he said, I told him to march off, and he damned me, and I beat him till he had enough of it, and he then went off. The reason of carrying the sword was, they spied the young man in the lane, and dogged him, for he had been very active in the affray at the Rope-walks, and they said they would sometime or other have satisfaction, and I looked upon myself to be liable to be insulted likewise. When alarmed by the cry of fire, and I had got below the house, my wife called after me, and said it is not fire, it is an affray in King street, if you are going take this, so I took it, and ran down, and I asked the soldier what I just now told you. I knocked the bayonet with what I had in my hand, another pushed at me, I struck his gun; my face was now towards the soldiers. I heard the first gun go off, and then the second gun went off. As I was looking to see if anybody was killed, I saw the tall man standing in a line with me. I saw him fall. Q. Where-abouts was you when you hit the gun? A. Nigh the gutter, about the middle of the party. Q. How long had the bells been ringing before you came from home? A. I thought it was 9 o'clock, and did not think any thing else, till somebody cried fire. Q. did you strike before the firing? A. Yes. Q. Did you strike as hard as you could? A. Yes, and hit the lock of his gun, and if I had struck a little lower, I should have left a mark that I could have sworn to. Q. Was the sword in your hand drawn? A. I drew it when the soldier pushed at me, and struck at him as I have men-

tioned. Q. Which gun went off first? A. I took it to be the right hand man. Q. Where did that soldier you struck at stand? A. I believe the fourth or fifth man from the corner of Exchange lane Q. How many soldiers were there? A. I did not count them, it appeared to me there were six or eight. Q. The man that said he would fire by the eternal God, where did he stand? A. He was about the middle. Q. Was you there when the first gun was fired? A. Yes Q. What was the immediate occasion of that? A. I do not know, I had only walked over from Quaker lane till I came to the soldiers, that was all the time I had. Q. Did you see any thing extraordinary, to induce them to fire that gun? A. Nothing, but a short stick was thrown, which seemed to go clear over all their heads. I heard a clattering of their guns, but what was the occasion of it I do not know. Q. Might not their iron ramrods occasion it? A. No, I suppose they knocked one gun against another in taking their places. When the Mulatto man was dead, I went up and met Dr. Gardner and Mr. Brindley. I asked them to come and see the Mulatto, and as we stooped to take up the man, the soldiers presented their arms again, as if they had been going to fire, Capt. Preston came, pushed up their guns, and said stop firing, do not fire. I went to them to see if I could know their faces again; Capt. Preston looked out betwixt two of them, and spoke to me, which took off my attention from them. Q. From where was that stick thrown? A. From Royal-exchange lane, and it flew over their heads almost as high as the sign. Q. What did you take to be the occasion of the soldiers answer to you? A. I do not know, without he was affronted at my asking the question of him. Q. Did you see anybody strike the soldiers before you struck with the sword? A. No, I had not time. Q. What distance of time was there betwixt the first and second gun? A. A very short space, I cannot say exactly.

Robert Williams—sworn.

Coming from Cornhill I went down to Dock square, I saw a number of people together; I heard there had been an affray by Murray's Barrack. Somebody said you had better all go home; some went to the North end, some up Royal-exchange lane, I came up to Cornhill: when I got to the Town-pump I heard the main guard had drawn a party off and gone to the Custom house, I ran down the north side of the Town house, and saw a number of people twenty or thirty, collected. I tried to press into the midst of them to know what they were about; I could not get in; I therefore stepped over the gutter, and saw the soldiers, seven or eight of them, by the sentry box. Some of the people were leaning on their sticks, some of them with their hands in their bosoms, and some were whistling. Numbers were crouding to get in as I was. I had my eye on the right hand man. Somebody said, do not press on the soldiers: I repeated the same words, do not press on the soldiers: when I said that, I saw something like a flash at my left, and heard the report of a gun, and the people opened from right to left; but I could not see where the gun was fired from; it made a noise like a pistol, and I imagined it was nothing but powder. As the people crouded to the lane, it took the view of the right hand soldiers from me, but I had a view of the left. I heard another gun go off, and saw a man fall. Q. Where was the man when he fell? A. He was about a foot over the south side of the gutter. Q. Was he nearer to the right than to the left of the soldier?—— A. They fired in a triangular manner. Q. How near did they stand

together? A. The width of a man asunder. I dropped on my knees, and saw the third gun go off, and then I saw a man who seemed to come upon his heel, and wind round a little and then fall on his back. The people were moving off, and the guns seemed to move as the people run. The fourth gun went off quickly after. Q. Was the second gun fired from the first right hand man? A. The flash seemed to come from the second man from the right. Q. Did the huzzaing increase, and a general pressing in upon the first gun being fired? A. No. Q. Was there many sticks? A. I saw but a few. Q. Was there any sticks thrown? A. No, I saw two or three snow balls, which seemed to come from a distance. Q. Did the people stand close in with the soldiers bayonets? A. No, they appeared to be two feet from the bayonets. Q. Did you hear a noise like striking on the barrels of the guns?——— A. I did not. Q. Did you hear a cry of the people, kill them, knock them over? A. No, I was not there above a minute, I saw no blows given by anybody; just before the firing there was a huzzaing and whistling.

Bartholomew Kneeland—sworn.

Q. Where did you live the 5th March? *A.* With my sister, Mrs. Torrey, by the Town pump. I heard the bells ring after nine, and went to the front door, I was followed by my sister and two others of the family; I stood there about five minutes, and saw a number of soldiers, about ten or a dozen, come towards the pump, they seemed to make a noise, one of them got nearly opposite to me, and hollowed, damn you, what do you do there? I made him no answer, he came up to me and pointed his naked bayonet at my breast, and held it there some time, and told me to get in, I told him to go along; he went towards the Post-Office Q. Do you know what regiment he belonged to? *A.* To the twenty-ninth. Q. Did he bid you get in when he asked you what you did there? *A.* Yes. In a little while I heard a volley of small arms, which I took to be in King-street.

Nathaniel Thayer—sworn.

On the evening of the 5th March I heard a very great noise, my wife said you had better go to the door and see what the matter is; I went, and saw about twenty people I believe, coming through Boylston's Alley, there was a terrible swearing, and they had clubs and swords and one thing and another; there came seven soldiers from the Main Guard without any coats on; driving along, swearing, cursing and damning like wild creatures, saying where are they? Cut them to pieces, slay them all. They came up to my door, I shut my door and went in, they went round the back lane to King-street:—this was after nine, before any guns were fired. Q. Do you know if any of these prisoners were there? *A.* No, I cannot fix on any man. Q. Had they any of them pouches on? *A.* I cannot say for the pouches; but they had no coats. Those people below at the alley, cried fire! which I took to be a watch-word. Q. Were those you saw before, soldiers or town's people? *A.* They came from the Barracks, and they were both soldiers and town's people. Q. How long were they there? *A.* Not two minutes, they went down towards the Market, and came up to King-street, by the back lane.

Nathaniel Appleton—sworn.

On the evening of the 5th March, a little after nine, I was sitting in my house, I heard a considerable noise in the street, I listened a little, and found it continued, I went to the door, I found the chief of the noise was at the bottom of the street, I inquired the reason, I was told the

soldiers and inhabitants were fighting; I waited at the door a minute or two, people were running down in two's and three's at a time, at length the noise subsided, and seemed to be down by Dock-square; I heard the bells ring and heard the cry of fire, I asked where it was? I was answered there was none, but the inhabitants and soldiers fighting. Deacon Marsh came out, and there came a party of soldiers from the southward, ten or twelve I think, they had short clothes I think, I saw some white sleeves amongst them with bayonets in their hands, but I apprehended no danger from them; I stood on the step of the door, they appeared to be pushing right down the street, when they got a few rods from the door, their course began to bend towards us, still I apprehended nothing but that they were coming to walk on the side of the way, then they lifted up their weapons, and I began to apprehend danger, they said something, I do not know what it was, but I went in as fast as I could, and shut the door immediately. They were within half a foot of it, had it been open a second longer they would have had the command of the door, but I was too quick for them and bolted my door, went up chamber, looked out of my window, and saw people flying here and there like pidgeons, and the soldiers running about like mad men in a fury till they got to the bottom of the street.

John Appleton—sworn.

About nine I was sent on an errand into King-street, I had my brother with me, I heard a noise, I run out of the shop where I was, to see what was the matter, I went into the middle of the street, and saw some talking to the Sentry, I thought they were going to quarrel and came away. Coming to Jenkins' Alley, my brother with me, there came out about twenty soldiers with cutlasses in their hands, my brother fell and they run past him, and were going to kill me, I said, soldiers, spare my life, one of them said no damn you, we will kill you all; he lifted his cutlass and struck at my head, but I dodged and got the blow on my shoulder. Q. Was the cutlass drawn? *A.* I believe it was not, for it rattled on my shoulder as if it had been sheathed.

Lieut. Col. Thomas Marshall—sworn.

I was at Col. Jackson's a few minutes after nine on the 5th of March. When I came out into Dock-square, all was quiet, I saw no persons in the whole square. I came up Royal-Exchange-lane, I saw nobody there. I saw the Sentry at the head of it in peace and quietness, nobody troubling him; I never saw King-street more quiet in my life. I went into my house, where was a kinsman of mine; I asked him how he did, and while I was speaking the young man in the shop knocked for me, I went into the shop, and in a half a minute, I heard the cry of murder once or twice; there is mischief, said I, at a distance, so there is, said he; I opened the front door to see, I saw nobody. I heard a noise, which seemed to come from Rowe's barracks. I stopped a little space, and the first I saw enter King-street, was a party from the Main Guard, ten or twelve came rushing out violently, I saw their arms glitter by the moon light, hallowing damn them where are they, by Jesus let them come. Some of them turned into Pudding-lane, and some went by the Town House steps; I went in and told my family to keep themselves easy, for there was no disturbance near the house. I went to the door again, and saw a party about the head of Quaker lane, and they used much the same expressions as the aforesaid party, and hallowed fire. They passed over the way, and the shade of the moon light hindered me to see if they went down Royal-Exchange lane or went up towards the

Town House. Something strikes my mind, I am not positive now, but I think it was that night, there were a few boys round the Sentry. I went and said, boys you have no business with the Sentry, go off, and they went off. I have often seen boys with the Sentry, and heard words often. The bells were then ringing, and the people began to collect as they do at the cry of fire, and I thought it was fire. I had a mind to get my staff and go out, but I had a reluctance, because I had been warned not to go out that night: but while the people were collecting, I came to the door, and saw them gathering thick from all quarters, forty, fifty or sixty. When the party came down, I thought it was no more than I had seen every day, I thought they had come to relieve the Sentry, they seemed to be in a posture of defence, and came through the people. I saw no opposition. When they came up, they passed out of the moon light into the dark, so that I could not see them, but I wondered to find them tarry so long. I heard a gun go off, I thought it was an accident, but in a little time another gun went off, and a third and a fourth, pretty quick, and then the fifth. There seemed to be a small stop in their firing, I then had no concern, but before the smoke was well away, I saw the people dead on the ground. I saw no opposition when they were drawn up, the people were not near them; what opposition might be at the lane I could not perceive, because the box covered that from my view. *Q.* Are you certain that the soldiers came from the Main Guard? *A.* Yes, I am certain of it. *Q.* You saw that party that fired, come from the Main Guard, but the first party of ten or twelve, did they come out from the Main Guard? *A.* Yes. *Q.* How were they dressed? *A.* I could not see their dress, but I saw their arms glitter.

Six o'clock, P. M. the Court adjourned to Thursday morning Nine o'clock.

THURSDAY, nine o'clock, the Court met according to adjournment, and proceeded.

Joseph Crosswell—sworn.

Next morning after the 5th of March, in King-street, before the soldiers were apprehended, I saw Killroy, I have known him by sight almost ever since he hath been here, I saw his bayonet bloody, the blood was dried on five or six inches from the point. *Q.* How near were you to the bayonet? *A.* About the same distance I am from the Judges, viz. six feet. *Q.* Was it shouldered? *A.* I forget the posture. *Q.* Are you sure it was blood. *A.* It appeared to be covered from the point five or six inches, it appeared to me to be blood, and I thought then, it was blood dried on.

James Carter—sworn

The next morning I observed the same with Mr. Crosswell, I do not know his name, but that's the man, (pointing to Killroy) his gun was rested on his right arm. *Q.* Did it appear to you to be covered from the point with blood? *A.* Yes I am positive it was blood. *Q.* How nigh was you to him? *A.* As nigh as I am to you, Sir, viz. three feet off.

Jonathan Carey—sworn.

Q. Did you know young Maverick, who was killed by the firing in King-street, on the 5th of March? *A.* Yes, very well. *Q.* Did you see him that night? *A.* He was at my house that night at supper with some young lads, and when the bells rung, as we all thought for fire, he run out in order to go to it.

John Hill, Esq—sworn.

Q. Did you see any thing of the affray at the Rope-walks? A. I saw a party of the soldiers near the Rope-walks with clubs, ordered them to disperse, commanded the peace, told them I was in commission for the peace, they paid no regard to me or my orders, but cut an old man who was coming by, before my face, and some of them struck at me, but did not hit me. Q. Were any of the prisoners among them? A. I do not know that they were.

The evidence for the Crown being closed, SAMUEL QUINCY, Esq. then addressed the Court and Jury, as follows:

May it please your Honours, and you Gentlemen of the Jury.

HAVING gone through the evidence on the part of the crown, it is my province to support the charge against the prisoners. The examination hath been lengthy, and from the nature of the transaction complex, and in some part difficult; I shall apply it as distinctly as I am able, without endeavouring to misrepresent or aggravate any thing to the prejudice of the prisoners on the one hand, or on the other to neglect any thing that justice to the deceased sufferers, the laws of my country, or the preservation of the peace of society demand.

There are two things necessary to prove, which I mentioned in the opening of this cause, namely, the indentity of the prisoners, that is, that they were that party of men who on the 5th of March last were in King-street, and that they committed the facts mentioned in the indictments, and farther, gentlemen, the circumstances attending and aggravating the commission of those facts.

As to the first point, to prove the indentity of the prisoners, all of them have been sworn to, and most of them by more than one witness.

To Killroy gentlemen, you have Langford, Archibald and Brewer, who swear positively; and farther you have the evidence of Ferriter and Hemmingway. The one, of Killroy's being in the affray at the rope-walks and the other to his uttering a number of malicious and threatening expressions in regard to the inhabitants of the town of Boston.

To White gentlemen, you have four more, Simpson, Langford, Bailey and Clark.

To Montgomery, you have Bailey, Palmes, Bass, Danbrook and Wilkinson.

To Hartegan, you have Danbrook and Simpson.

To Wemms, you have Simpson and Bridgham.

To Carrol, Bailey and Danbrook.

To Warren, Bridgham, Dodge and Simpson. Brigham indeed expressed some doubt, and gave his reasons for it, which may be worthy notice hereafter.

To M'Cauley, you have Mr. Austin.

And that Warren was at the Rope-walks, you have also the testimony of Mr. Ferriter.

All these witnesses as I have mentioned them to you, have testified on oath to the several prisoners, that they were that evening in King-street, and of the party; the next thing to be inquired into, gentlemen, is as to the facts. In order to ascertain these it will be necessary to have recourse to the testimony of the witnesses. I could have wished I had been able, after the fatigue of yesterday, to have arranged the evidence in the order of time as the facts took place; but not being able to do this, I must take them up as the witnesses were examined. I will however endeavour to state the facts in the best arrangement I can.

The first witness Mr. Austin, says, that he was in King-street that evening near the Sentry-box which was placed at the Custom-house ; that about a quarter after nine he saw the party coming from the Main-guard ; when they got down to the Sentry box, they wheeled to the left and formed themselves round it ; and in coming round M'Cauley pushed at him with his bayonet, damned him, and bid him to stand off, this was the first instance of their conduct. Mr. Austin was not particular who fired, his back being towards the soldiers when that happened. He says there were five or six guns fired ; and he saw M'Cauley after the firing. These are the most material circumstances of his testimony.

The next witness is Bridgham, who says he was in King street also ; and the next morning when he went to the goal to view the prisoners, he apprehended he had seen Warren in King-street the evening before, but afterwards he saw a person that looked very like him belonging to the same regiment, which occasioned him to doubt whether he was the man or not ; my remark upon this, is, it was probable that the first impressions made on his mind were the strongest, and therefore you cannot well doubt he was right in judging that Warren was in fact the person he saw the evening before ; he saw also Wemms the corporal stationed on the left of the party betwixt him and the tall man ; the Corporal was on the left entire, if so, gentlemen, Warren must have been the third man from the left in that situation ; there were a number of people he says round the party huzzaing, some having sticks ; his face was the other way when the first gun went off, he heard a noise like the clashing of guns, he saw Gray fall, and says the person that killed him, must have been near the centre of the party ; when the left man fired, there were but few in the street, they divided and were passing off ; the last man that fired, he says levelled his piece, following a lad that was running down the street before he fired ; he also mentions a number of people coming down from the north side of the Town-house, collected as he supposed by the bells, and not disposed to commit any injury whatsoever ; he did not apprehend himself or the soldiers in any danger from any thing he observed ; he says about seven guns fired, and there were about twelve people at that time before the party.—These are the most material circumstances in his evidence.

Dodge says, he saw Warren, but cannot swear to any of the rest, the man who fired first he thinks stood towards the left, about two from the corner, however he was over at Vernon's shop across the street, and perhaps not able to make so good observations as some others ; he saw about fifty people in the street, but he saw nothing in their hands ; he saw a number of snow balls thrown, but none as he observed with violence or in anger ; he saw the people near the party of soldiers, and they pushing at them with their bayonets ; he does not imagine there there was any thing besides snow balls thrown.

Clark the next witness, saw White the Sentinel at his station just before nine o'clock, that he spoke to him, but saw no one at that time near or molesting him.

Mr. Langford comes next, and this witness is perhaps as particular as any one witness on the part of the Crown ; it appears by the relation of his evidence that he came down about nine o'clock as a watchman, in order to go to the Watch house next adjoining the Town house ; when he came down, he was told the people and soldiers were fighting at Murray's Barracks ; upon this, he took his course that way, but the matter being over by the time he got there, he returned to King street : there were a

number of boys round the Sentinel, to whom he spoke and told him he need not fear, the boys would not hurt him ; soon after this the Sentinel, without saying any thing to the people, went up the Custom house steps and knocked at the door ; a person within opened it and said something, but what, the witness did not hear ; upon that the Sentinel turned round, and pointed his piece at the people opposite to him. Langford spoke again, and told him there was no danger, the boys would not hurt him, and he shouldered. The witness continued talking with the Sentry till the party came down, and then he went into the street. About this time Gray, one of the unhappy sufferers, came and clapped Langford on the shoulder, saying what's here to pay ? Langford replies, I do not know, but something I believe will come of it by and by ; his stand was half way as he said betwixt the Sentry box and Royal exchange lane ; the box being on the right corner of the lane, and he opposite the centre of the lane ; the witness and Gray were standing together talking familiarly, Langford leaning on his stick, and Gray standing with his hands folded in his bosom, without a stick in his hand, neither saying or doing any thing to the soldiers. You cannot but recollect Gentlemen, that this witness was expressly and repeatedly asked, if Gray had a stick, or said any thing to the soldiers ? he as often answered no. Langford spoke to Killroy, and after two guns were discharged, seeing him present his piece, said to him damn you are you a going to fire ? Presently upon this, Killroy levelled his piece and firing directly at Gray, killed him dead on the spot ! The ball passed through his head, and he fell on Langford's left foot ; upon which, not satisfied with having murdered one of his fellow creatures in that cruel and inhuman manner, he pushed with his bayonet, and pierced Langford through his great coat and jacket ; here Gentlemen, if any there can be, is evidence, and I think complete evidence, of a heart desperately wicked, and bent upon mischief, the true characteristic of a wilful malicious murderer.

It could not be thought that the distance the witness and Gray were standing from him, without offering any violence, but Killroy the prisoner saw them distinctly, and aimed to destroy them ; if you compare this testimony with Mr. Hemmingway's, who swears to Killroy's uttering expressions importing, that he would miss no opportunity of firing on the inhabitants, he had wished for it ever since he landed, you certainly, Gentlemen, can have no doubt in your minds but that he had that intention at heart, and took this opportunity to execute it.

The crime of murder, Gentlemen, it will be agreed by all, necessarily involves in it the malice of the heart, and that malice is to be collected from the circumstances attending the action ; but it is not necessary to constitute malice, that it should be harboured long in the breast ; a distinction is made in the books betwixt malice and hatred, and a good distinction it is ; I have it in my hand and will read it ;

Kelyng, 126 and 127. *Mawgridge's Case.* " Some have been led into mistake by not well considering what the passion of malice is ; they have construed it to be a rancour of mind lodged in the person killing, for some considerable time before the commission of the fact, which is a mistake arising from their not distinguishing between hatred and malice." And a little after, " Malice is a design formed of doing mischief to another ; *cum quis data opera male agit*, he that designs and useth the means to do ill is malicious. 2 Inst. 42. He that doth a cruel act voluntarily, doth it of malice prepensed." 3 Inst. 62.

Though Gentlemen, it happens on a sudden occasion as this was, if the

act is in its nature wanton and cruel, the law will persume it be malicious unless that presumption is taken off by contrary evidence.

Ferriter, who testified to the same person, tells you, he was remarkably active at the Rope-walks amongst the rest of the soldiers; taking therefore all the circumstances of this testimony together, it must remove every sort of difficulty in your minds as to the purpose Killroy had at that time; it seems apparent that there were strong marks of malice in his heart; the person you can have no doubt of, the fact you can have no doubt of, nor can you I think doubt of the species of crime.

The next witness, who also testifies to Killroy's going down, and being of the party, swears that he was about twenty feet from the party when the first gun was fired; that he also had been, previous to this at Murray's barrack's when the affray happened there, and tells you the behavior of the soldiers in that scene.

Brewer, another witness also swears to Killroy. He saw the Sentinel on the Custom House steps; at that time there were about twenty people, boys, chiefly about fourteen, and some younger, round about him, but they made no great show; he saw the Captain come down with the party, the Sentinel at this time had his gun breast high; that while the witness was speaking to Monk, (a young lad who was wounded) he lost sight of Preston and the guns went off: Monk complained of being shot, but Brewer apprehended it was nothing but powder, and that he was more frightened than hurt; the firing began at the right and extended to the corner man on the left. Killroy attacked this witness in the same manner M'Cauley did Austin, by pushing at him with his bayonet; a number were collected by the ringing of the bells, but he heard nothing particular in regard to abusive language; he saw no snow balls thrown, and when the soldiers came down, he heard some of the people crying fire, and that was the general cry; some crying fire because the bells rung, some, no doubt, fire to the soldiers, daring them to it; but of this no great can be made in the present case. There were seven guns, he says, fired, he was certain as to the number, having counted them himself. He says further, he met Dr. Young in Dock square, and that he had a sword; the witness said, let every man go to his own home, and the Doctor replied, that is the best way, the soldiers are gone to their barracks: perhaps something will be attempted to be made of this circumstance, and therefore I shall make an observation upon it.—If you attend to the testimony of several of the witnesses, there were that evening in the streets at all parts of the town, a number of soldiers; they sallied out from Murray's barracks and everywhere with clubs, cutlasses, and other weapons of death; this occasioned a general alarm; every man therefore had a right, and very prudent it was to endeavour to defend himself if attacked; this accounts for the reason of Dr. Young or any one inhabitant of the town having a sword that evening; the Doctor surely could not be supposed to have had any intention of mischief, because the same witness tells you his cry was, the soldiers were gone to their barracks, and go every man to his own home.

Mr. Bailey the next witness, testifies as to the identity of some of the party, that there were Montgomery, Carrol and White there; that he placed himself at the post by the Custom House, and stood there all the time; that there were about twenty boys, some fourteen years old, and some under that; he was near the Sentinel when the party came down; Carrol pointed at his breast with his bayonet, and White said do not hurt him; that Montgomery discharged his piece first; he thinks it was

about half a minute before the second gun went off; the grenadier's gun he says was struck out of his hand by some person near him, and that he recovered it, and then fired; that Carrol was the next but one to him: he imagines, Gentlemen, that Montgomery killed Attucks; Attucks was about fifteen feet from him over the gutter: He continued in his station at the corner from the time of the party's coming down till all was over; he did not apprehend himself or the soldiers in danger, from clubs, sticks, snow balls, or any thing else; he saw the person that struck Montgomery as he supposed, at the corner of Royal-Exchange lane; he was asked if Attucks was the person, he answered no. From this witness you ascertain, Gentlemen, that Montgomery fired first, and that he was on the right wing of the party.

The next witness is Mr. Palmes, he saw the Sentry, and nobody near him: He had come from Murray's barracks, and hearing a disturbance in King street, he was told he had better not go down, he said I will, and try to make peace; he also saw Montgomery there; the stick that struck Montgomery was thrown, as he apprehended; Montgomery stept back and then fired; he thinks he heard seven or eight guns, but did not count them, and it was seven or eight seconds between the first and second gun; as the last gun went off, Montgomery pushed at him with his bayonet and he struck him with his cane, and struck the gun down; the bayonet stuck in the snow, and the gun fell out of his hand; Mr. Palmes at this time slipt and fell, but quickly recovered himself; Montgomery attempted again to push him with his bayonet, and he threw his cane at him and run; not satisfied with this, Montgomery attempted to push him a third time, and in that attempt he slipt and fell, and thereby gave Palmes an opportunity to get out of his way, or else he says he had been run through the body; from the testimony of this witness, you have further proof that Montgomery was the person who fired first; that after firing, he continued to discover marks of malice and malevolence, by pushing with his bayonet, and endeavouring to destroy not only Mr. Palmes, but all around him.

Next comes Mr. Danbrook, he saw there Hartegan, Montgomery, and Carrol. Here is another witness to three of the party; it was about a quarter after nine when he came up; he stood about ten or twelve feet from Montgomery; he saw no stick strike him, but a little stick he says flew over their heads, which he took to be a piece of rattan; he was looking on Montgomery when he fired; this is another evidence as to the fact of firing, upon which, the witness thinks, two men fell; if that was the case, there was execution indeed; by the discharge of one gun two persons killed on the spot! He did not hear the second gun, but supposes, that by one of the guns Attucks fell, he stooped to see if the Mulatto was dead, then turned round and saw another man fall; Attucks at that time was near him, at his left, leaning on his stick; that circumstance I would have you keep in your minds, Gentlemen, that you may remember it when you have the whole evidence together.

Jedidiah Bass is the next witness, he came up Royal-exchange lane; when he got into King street, he saw Montgomery there: here, Gentlemen, is another witness as to the identity of one of the prisoners, and the witness saw him push his bayonet at a man that stood near him; he drew back into the lane, and in a minute Montgomery fired: the number of guns he took to be six, but did not count them: the people began on the firing of the first gun to run, some one way and some another. As he

came up Dock square, the people were saying let us go home, there is no fire, the soldiers are gone to their barracks.

After this witness comes Mr. Wilkinson, who gave a very regular account; he tells you he was at his own house when the bells rung for nine as usual; a little while after that he heard Dr. Cooper's bell, on which apprehending it was for fire, he put on his surtout, and went out; he came towards the Town House, went past it as far as the town-pump, and the people from the windows were cautioning those in the street not to go down, for they would be killed; the night was so bright that he was able where he was to see down the street as far as Boylston's alley, and there he saw a number of soldiers sallying out, brandishing their swords, and contending with the people; there were about thirty or forty round them with buckets and bags, thinking as he supposed that the bells rung for fire; after this he went to the Guard House, intending to wait there, to learn if any mischief had been done at the barracks; he presently saw capt. Preston come down, as he imagined from behind the Old Brick meeting-house, and call to the guard, and ordered them to turn out; then he saw the party come out, and saw the Captain draw his sword and march down with them: at that time there were about thirty or forty people in King street; he went a little lower, and turned back again round the north side of the Town House, and placed himself at the Royal-exchange tavern; and the party was formed when he got there: he tells you he was not at all apprehensive of danger, consequently he was capable of making observations, and placed himself in such a situation as to do it; the party formed in a circle, and he stood about four or five minutes, before he heard the word given to fire: that he heard it twice: on the first command they did not fire; it was repeated, and then the guns went off one after another, like the striking of a clock, he was about two yards from them and thinks the firing began at the right. This corresponds with the testimony of several witnesses. He saw the flash of each gun; seven went off, and one flashed. There, Gentlemen, you have evidence that all the party fired save one: the witness was asked if he saw snow balls, ice, oyster shells, or any thing else thrown by the people, to which he answered no; he said if he had, he should have thought himself in danger, and have retreated; he heard two or three cheers before the party came down, *but none afterwards*. Now, Gentlemen, if you recollect that circumstance, and the manner of his relating it, you will remember he expressed himself very emphatically: from this testimony you have further express evidence of the fact of firing, that it came from the right, and from thence followed on to the left: he did not see the persons who were killed, therefore there is nothing in his evidence relating to that.

From the next witness, Mr. Simpson, you have proof of White, Wemms, Warren, and Hartegan, four of the prisoners, that they were all of the party that evening; and after relating a number of minute circumstances, he swears to the discharge of eight guns, which if you give credit to his testimony, will prove to you that the whole party fired; from him you have also further evidence of the killing Attucks, Gray and Caldwell.

Mr. Fosdick deposes, that upon his going down King street, the first salutation he had, was the pressing of soldiers behind him with the points of their bayonets, crying out, damn your blood, stand out of the way! This Gentlemen, was the conduct of the party as they came down along. From Mr. Fosdick also you have evidence of their manœuvres both before and after they formed; when the first gun was fired, the second man from

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the right pushed his bayonet at him, and wounded him in the breast, you saw, Gentlemen, the mark in Court: before this two different men pierced him in the arm and elbow quite to the bone; here, Gentlemen, were three thrusts given to a person innocently passing down upon the cry of fire! he knew not, as he swears to you, what was the occasion of the party's coming down. The right hand grenadier fell after he had fired, occasioned by pushing at a person who went down Royal-Exchange lane, this probably was Mr. Palmes, in whose evidence if you remember, you have this circumstance related; on his pushing at him the third time, Montgomery's foot slipped, which gave him an opportunity to escape down the lane.

Hemmingway the next witness, swears, that being in company with Killroy, he heard him say he never would miss an opportunity to fire on the people of the town, for he had wanted it ever since he landed; that Killroy was not then in liquor nor appeared to be in anger; he told him he was a fool, for saying so, he said, I do not care, I will not miss an opportunity for all that; these expressions, gentlemen, speak for themselves, they are of such a nature as you cannot but draw from them the temper of the man's heart who spoke them, which you will consider at your leisure.

Mr. Hiller came from the North end, was told there was no fire, but the soldiers were insulting the inhabitants; a number of people in Dock square seemed afraid to go up to King street, another circumstance which accounts for the appearance of the inhabitants, at that time in Dock square; the witness went up to King street, saw the Sentry with his bayonet charged breast high, about twenty or thirty boys about him; he had often seen many more in that street in such a night as that was; it was bright moon light; the people on the party's coming down seemed to collect in a body in Royal-Exchange lane; as he passed the last man, he heard a gun from the light, thinks it was about twenty seconds before the second gun fired; he observed a little boy running across the street crying fire, and the left hand man followed the boy with his gun; there was nothing passed he observed to induce them to apprehend any danger; he says, had even the soldiers pointed at me, I should not have thought myself in danger; he thinks there were six guns fired; he saw no snow balls thrown, if there had been he must have seen them. When the soldiers came down, there was a sort of shouting, and a short time after, the first gun fired. I need not dwell longer on this testimony for you must remember it yourselves.

Nicholas Ferriter was next sworn, who knew Killroy and Warren; he swears to their being at the Rope-walks before this affair happened; he relates the circumstances of three several attacks in the Rope-walks, the first was a single person who challenged him out to fight; a squabble ensued, and the soldier took to his heels; he soon collected a dozen more, came again, and had a farther battle, in which the soldiers were again worsted; they then collected a large number, to the amount of thirty, and in about three quarters of an hour they came back, and went at it again; in this last squabble the soldiers were a third time worsted. From this affair perhaps may be dated a great part of the proceedings of the Monday evening; you have heard from the witnesses that the soldiers of that regiment remembered the grudge, and discovered a malicious disposition; were frequently seen in parties, and when single, with arms, attacking the people passing the streets. Killroy one of the prisoners, and Warren, are expressly sworn to, that they were in this affray; Gray

and Ferriter went into King street, Gray had no stick; Ferriter left Gray in King street; it appears he did not go down with a disposition to commit any assault at all.

Burdick is the next witness, he says when he came down to King street he spoke to a soldier, he thinks it was Montgomery, he asked him if he was loaded and intended to fire; yes, by the eternal God! was the answer he received.—The intention of that soldier, whoever he was, you clearly discover; the witness thinks it was Montgomery; he says further, a soldier pushed at him with his bayonet, and he struck his gun; he saw nothing flung but a small stick, which hit nobody; as he was stooping to take up the dead, they cocked their guns and presented at him again; thus you see the same disposition continued, they were aiming to push at every body round about them; and after they had killed these persons, they were not satisfied with that, but attempted to push those that were taking them away.

Mr. Williams who was next sworn, hath nothing material in his testimony, but that of the guns following the people as they ran, after the first gun was fired; that seven guns were fired, that he saw no sticks or snow balls fall near them, that all the snow balls he did see seemed to be light, and not hard.

It has been asked from the bench, Whether there may not be voluntary manslaughter? I readily grant there may; it has also been observed, that homicide which includes murder, must be committed with coolness and deliberation; I allow it, and my application of this rule, is, that it comes within the evidence you have of the particular facts related by the witnesses with regard to Killroy; there is no manner of doubt with me, but the fact was done in the manner which the law calls *sedato animo*; he was doing a deliberate action, with a cool and calm mind; it appears, if you believe Langford, he was not molested; it appears the person he killed, and at whom he aimed, and the person whose clothes he pierced with his bayonet, were standing peaceably, one leaning on a stick, and the other with his arms folded.

After the witnesses we have gone through, a number of gentlemen were examined, most of whom lived in Cornhill, who have testified to the conduct of the soldiers, that evening the affair happened.

I will not take them in order, for I apprehend, by recurring to Colonel Marshall first, the rest will come in more naturally; he says, he came from Colonel Jackson's in Dock square, about a quarter after nine o'clock; that the street was quite still, nobody passing through Dock square; he came up to his own house next the Custom House, he passed the Sentinel, and there was nobody near him; King street was quite still, fewer people passing than he had usually seen on such a fine night; he went into his own house, and soon after heard a distant cry of murder, what part of the street it came from he did not know: He, gentlemen, you will remember, intimated also this circumstance, that he had been warned not to go out that evening; this gave him an apprehension there was some mischief to be betwixt the soldiers and the inhabitants;—he mentioned it to the person in the shop, and went out; looking towards the Guard House, he saw a number of soldiers issue from thence in an undress, with naked swords, cutlasses, &c. crying out "Damn them where are they? By Jesus let 'em come." As to the situation of the moon, whether she was north or south, which has been much altercated, I cannot see it will make much one way or the other, it is sufficient that Colonel Marshall, whose credibility and capacity will not be disputed, has sworn that from his door

he observed a party of soldiers come down in undress, armed with cutlasses and other weapons, the cutlasses he swears he particularly saw glittering in the moon light; the expressions he said he plainly heard, while they were brandishing their swords; when this party passed off, he saw a second party come up Quaker lane, armed in the same manner, and making use of the same kind of language, and that party he said cried fire; in his testimony on the trial of Captain Preston, he said the bells rung on that cry; he expressed some doubt of this yesterday, but it was certainly just about that time; the use I would make of this is, to compare it with what the other witnesses say of the conduct of the soldiers in Cornhill; as Mr. Thayer expresses it, it is probable the word fire was a watch-word; it appears to me, that if we can believe the evidence, they had a design of attacking and slaughtering the inhabitants that night, and they could have devised no better method to draw out the inhabitants unarmed, than to cry fire!

Mr. Thayer was sitting at his fire, in Cornhill, near Boylston's alley, he heard a great noise, and went to the door, he saw seven soldiers in an undress coming down like wild creatures, with cutlasses in their hands, crying damn them, where are they? upon this he heard a cry of fire, and supposed it to be a watch-word.

Mr. Kneeland, who lives by the town-pump, came out and stood at his door; saw a number of soldiers pass by him armed; one of them came up to him and said, damn you what do you do here? and pointed his bayonet to his breast, telling him to go in.

Mr. Appleton who lived opposite, tells you he was standing by his neighbour Mr. Marsh, they were both at the door; a number of soldiers came running down, armed with cutlasses, in an undress, and they seemed to come out of their way, (observing them at the door) with uplifted weapons, intending as it appeared, to strike them: but they fortunately got into their doors.

Then, gentlemen, comes the son of Mr. Appleton, the young master who was sworn yesterday, whose story, with his manner of telling it, must strike deep into your minds; I am sure it did in mine; a child of his age, with a younger brother sent of an errand a few steps, and on returning home, struck at by a party of soldiers, nay ruffians, with cutlasses, he innocently crying, soldiers, spare my life! No damn you we will kill you all, or words to that purpose, attended with a blow, was the answer the little victim received! what can indicate malice if this does not? cruelty almost equal to that of a *Pharaoh* or *Herod*. I remember at the last trial, my brother Adams made this observation, that "Man is a social creature, that his feelings, his passions, his imaginations are contagious." I am sure if in any instance it is so, here was food enough for such passions, such imaginations to feed upon.

But, gentlemen, as it does not immediately relate to the prisoners, all the use I mean to make of it is, to show you that from the conduct and appearance of the soldiery, in different parts of the town, the inhabitants had reason to be apprehensive they were in danger of their lives; children and parents, husbands and wives, masters and servants, had reason to tremble one for another. This apprehension, together with the ringing of the bells, collected numbers of people in different quarters, as is commonly the case when there is any appearance of fire; and the centre of the town, when there is a doubt where fire is, becomes naturally the place of rendezvous: this accounts for the number of people that were there, and for some having sticks and canes. I mention this only to take

off the force of any evidence or pretence that may be made, that there was an intention of the people to assault, or as it has been expressed, swallow up the soldiers.

I have now gone through the evidence on the part of the Crown, in support of the charge against the prisoners, I shall make a very few observations, and leave it with the prisoners and their counsel to make their defence, and Mr. Paine who is on the side of the Crown with me, to close the cause.

I think gentlemen upon the whole evidence, you can in the first place, have no doubt but that all the prisoners at the bar were of that party of soldiers headed by capt. Preston, who went down to the Custom-House on the 5th March, the evening mentioned in the indictments; that the five persons named in those indictments were killed by some one or other of that party, but who they were that killed those several persons, may not be precisely ascertained, except in the case of Killroy, against whom I think you have certain evidence.

It is a rule of law, gentlemen, when the fact of killing is once proved, every circumstance alleviating, excusing, or justifying, in order to extenuate the crime must be proved by the prisoners, for the law presumes the fact malicious, until the contrary appears in evidence.

There is nother rule I shall mention also, and that is, that it is immaterial, where there are a number of persons concerned, who gave the mortal blow, all that are present, are in the eye of the law principals.—This is a rule settled by the Judges of England upon solid argument.—The question therefore then will be, what species of homicide this is? and the decision of that question must be deferred until the defence comes out by the evidence on the other side.

The laws of society, gentlemen, lay a restraint on the passions of men, that no man shall be the avenger of his own cause, unless through absolute necessity, the law giving a remedy for every wrong: If a man might at any time execute his own revenge, there would be an end of law.

A person cannot justify killing, if he can by any means make his escape; he should endeavour to take himself out of the way, before he kills the person attacking him.

Here one of the Court judging it improper for the Counsel in opening the cause to anticipate the defence, and this being determined by the whole Bench, Mr. Quincy then closed with saying—

I was about to make some further remarks, but it is thought by the honourable Court improper to anticipate what may urged on the other side. I shall therefore rest the case as it is, and doubt not but on the evidence as it now stands, the facts, as far as we have gone, against the prisoners at the bar, are fully proved, and until something turns up to remove from your minds, the force of that evidence, you must pronounce them GUILTY.

Mr. JOSIAH QUINCY, jun.

May it please your Honours, and you Gentlemen of the Jury,

THE prisoners at the bar stand indicted for the murder of five of his Majesty's leige subjects, as set forth in the several indictments, which have been read to you: the persons slain, those indictments set forth, as "*being in the peace of God, and our Lord the King,*" at the time of the mortal wounds given.

To these indictments, the prisoners have *severally* pleaded Not Guilty: and for their trial have put themselves on *God and their country*, which country you are. And by their pleas, thus *severally* pleaded, they are to stand or fall, by the evidence which shall *respectively* apply to them.

By their plea of not guilty, they throw the burden of proof, as to the *fact of killing*, upon the crown; but, upon which being proved, the matters, they alledge to *justify, excuse*, or *extenuate*, must be adduced by them, and supported by legal evidence. The *truth* of the *facts*, they may thus alledge, is your sole and undoubted province to determine; but upon a supposition that those *facts* shall appear to your satisfaction, in the manner we alledge, the grand question then to be determined, will be, whether such matters so proved, do, *in law, extenuate, excuse* or *justify*. The decision of this question belongs to another department, namely, the Court. This is law so well known and acknowledged, that I shall not now detain you by a recital of authorities, but only refer to Judge Foster's Crown Law, where this point is treated with precision, and fixed beyond controversy. It may not be amiss, however, to assure you, that as certain as the cognizance of *facts* is within your jurisdiction, as certain does the law, resulting from *these facts, in cases of the present kind*, seem to reside *solely* in the Court: unless cases where juries, under the direction of the Court, give general verdicts, may be denominated exceptions.

I take it, that, in the cause now before us, it will not be contested, that five persons were unfortunately killed, at the time the indictments charge; and this case will naturally enough divide itself into three main divisions of enquiry.

I. Whether any homicide was committed?

II. By whom was it committed?

III. Is there any thing appearing in evidence, which will justify, excuse, or extenuate such homicide, by reducing it to that species of offence called manslaughter?

Before we enter upon these inquiries, permit me, gentlemen, to remind you of the importance of this trial, as it relates to the prisoners.—It is for their lives! If we consider the number of persons now on trial, joined with many other circumstances which might be mentioned, it is by far the most important this country ever saw.

Remember the ties you are under to the prisoners and even to yourselves: The eyes of all are upon you. Patience in hearing this cause is an essential requisite; candor and caution are no less essential. It is tedious and painful to attend so lengthy a trial; but remember the time which has been taken up by the Crown in the opening. By every bond of humanity and justice, we claim an equal indulgence: nay, it is of high importance to your country, that nothing should appear on this trial to impeach our justice or stain our humanity.

And here, let me remind you of a notion, which has certainly been too prevalent, and guard you against its baneful influence. An opinion has been entertained by many among us, that the life of a *soldier* was of very little value; of much less value than others of the community.—The law, gentlemen, knows no such distinction; the life of a soldier is viewed by the equal eye of the law, as estimable as the life of any other citizen.

I cannot any other way account for what I mention, but by supposing that the indigence and poverty of a soldier—the toils of his life—the severity of discipline to which he is exposed—the precarious tenure by which he is generally thought to hold his life, in the summary decisions of a court-martial, have conspired to propagate a sentiment of this kind; but a little attention to the human heart will dissipate this notion.

The soldier takes his choice, like all others, of his course of life:—he has an equal right, with you or me, so to do. It is best we should not all think alike. Habit makes all things agreeable. What at first was irk-

some, soon becomes pleasing. But does experience teach, that misery begets in general an hatred of life?—By no means; we all reluct at death;—we long for one short space more;—we grasp, with anxious solicitude, even after a wretched existence. God and Nature has implanted this love of life.—Expel therefore from your breasts, an opinion so unwarrantable by any law, human or divine; let not any thing so injurious to the prisoners, who value life as much as you; let not anything so repugnant to all justice, have influence in this trial. The reputation of the country depends much on your conduct, gentlemen, and, may I not add, justice calls aloud for candor in hearing, and impartiality in deciding this cause, which has, perhaps, too much engrossed our affections; and, I speak for one, too much excited our passions.

The law, by which the prisoners are to be tried, is a law of mercy—a law applying to us all—a law, judge *Blackstone* will tell us, "*founded in principles, that are permanent*, uniform *and* universal, *always* conformable *to the feelings of* humanity *and the indelible rights of mankind.*" Sec 4, 13. Cap. 3.

How ought we all, who are to bear a part in this day, to aim at a strict adherence to the principles of this law—how ought we all to aim at utterly eradicating every undue bias of the judgment—a bias subversive of all justice and humanity.

Another opinion equally foreign to truth and law has been adopted by many.

It has been thought, that no possible case could happen, in which a soldier could fire, without the aid of a civil magistrate. This is a great mistake—a very unhappy mistake indeed!—one, I am afraid that had its influence, on the fatal night, which we all lament. The law, *as to the present point*, puts the citizen and soldier under *equal* restraint. What will justify and mitigate the action of the one, will do the same to the other.———Let us bear this invariably in mind, in examining the evidence. But before we proceed to this examination, let us take a transient view of some occurences, preceding and subsequent to the melancholy fifth of March.

About some five or six years ago, it is well known, certain measures were adopted by the British parliament, which gave a general alarm to this continent. Measures were alternately taken, in Great Britain, that awakened jealousy, resentment, fortitude and vigilance.—Affairs continued long fluctuating. A sentiment universally prevailed, that our dearest rights were invaded. It is not our business here to inquire, touching these delicate points. These are concernments, which however interesting or important in themselves, we must keep far away from us, when in a Court of law. It poisons justice, when politics tincture its current.

I need not inform you, how the tide rose, as we were advancing towards the present times. The general attention became more and more roused—people became more alike in opinion and practice. A vast majority thought all that was dear was at stake—sentiments of liberty—property—ignominious bondage—all conspire to increase the ferment. At this period the troops land.—Let us here pause, and view the citizen and soldier.

The causes of grievance being thus spread far and wide, the inhabitants viewed the soldierly as called in, foreign from their prime institution, to force obedience to acts, which were, in general, deemed subversive of natural, as well as constitutional freedom. With regard to the universal prevalence of ideas of this kind, it does not fall within our present plan, to give you direct, positive evidence. It would be too foreign to the present issue, though pertinent enough, when considered as a clue to

springs and motives of action, and as an additional aid to form a just judgment in our present inquiry. You Gentlemen, who come from the body of the county, are presumed to know these facts, if they are true; nay their notoriety must be such, provided I am not mistaken in my conjecture, that the justice of my observation on this matter, must be certainly confirmed by your own experience. I presume not in this, or any other matter of fact, to prescribe to you; if these sentiments are wrong, they ought to have no influence; if right, they ought certainly to have their due weight.

I say, Gentlemen, and appeal to you for the truth of what I say, that many on this continent viewed their chains as already forged, they saw fetters as prepared, they beheld the soldiers as fastening, and rivetting for ages, the shackles of their bondage. With the justness of these apprehensions, you and I have nothing to do in this place. Disquisitions of this sort, are for the Senate, and the chamber of Council——they are for statesmen and politicians, who take a latitude in thoughts and actions; but we, Gentlemen, are confined in our excursions, by the rigid rules of law.—Upon the *real, actual* existence of these apprehensions, in the community, we may judge—they are *facts* falling properly within our cognizance—and hitherto may we go, but no further. It is my duty, and I ought to impress it on your minds, and you, Gentlemen, ought to retain the impression——You are to determine on the facts coming to your knowledge;——You are to think, judge, and act, as Jurymen, and not as Statesmen.

Matters being thus circumstanced, what might be expected. No room was left for cordiality and friendship. Discontent was seated on almost every brow. Instead of that hospitality, that the soldier thought himself entitled to, scorn, contempt and silent murmurs were his reception. Almost every countenance lowered with a discontented gloom, and scarce an eye, but flashed indignant fire.

Turn and contemplate the camp. Do we find a more favourable appearance?

The soldier had his feelings, his sentiments, and his characteristic passions also. The constitution of our government has provided a stimulus for his affections.—The pride of conscious virtue, the sense of valour, the point of honour.

The law had taught him to think favourably of himself. Had taught him to consider himself, as peculiarly appointed for the safeguard and defence of his country. He had heard, that he put not off the citizen when he entered the camp; but because he was a citizen, and wished to continue so he made himself for a while a soldier.

How stinging was it to be stigmatised, as the instrument of tyranny and oppression? how exasperating to be viewed, as aiding to enthral his country? He felt his heart glow with an ardour, which *he* took for a love of liberty and his country, and had formed to himself no design fatal to its privileges. He recollected no doubt, that he had heretofore exposed himself for its service. He had bared his bosom in defence of his native soil, and as yet felt the smart of wounds received in conflict for his King and Country. Could that spirit, which had braved the shafts of foreign battle, brook the keener wounds of civil contest?—The arrows which now pierced him, pierced as deep and rankled more, than those of

* *See Blackstone's Commentaries*, vol. I. p. 407.

former times. Is it rational to imagine much harmony could long subsist?

We must take human nature as we find it, and not vainly imagine, that all things are to become new, at such a crisis.

There are an order of men in every commonwealth who never reason, but always act from feelings. That their rights and liberties were filched away one after another, they had often been told. They had been taught by those whom they believed, that the ax was now laid to the root of the tree, and one more stroke compleated its fall. It was in vain to expect to silence or subdue these emotions by reasons, soothings, or dangers. A belief, that nothing could be worse than the calamities which seemed inevitable had extended itself on all sides, and arguments drawn from such sources had little influence. Each day gave rise to new occurrences which encreased animosities. Heart burnings, heats and bickerings became more and more extensive. Reciprocal insults soured the temper, mutual injuries embittered the passions.

Can we wonder, that when everything tended to some important action, the period so soon arrived? Will not our wonder be increased to find the crisis no sooner taking place, when so many circumstances united to hasten its approach? To use an allusion somewhat homely, may we not wonder that the *acid* and the *alcali* did not sooner ferment?

A thought here imperceptibly forces itself on our minds, and we are led to be astonished that persons so discordant in opinion, so opposite in views, attachments and connexions, should be stationed together. But here, gentlemen, *we must stop.* If we pursue this enquiry, at this time, and in this place, we shall be in danger of doing great injustice. We shall get beyond our limits. The right of quartering troops in this province must be discussed at a different tribunal. The *constitutional* legality, the propriety, the expediency of their appointment, are questions of state, not to be determined nor even agitated by us, in this court. It is enough for us if the law takes notice of them when thus stationed; if it warrants their continuance; if it protects them in their quarters. They were sent here by that authority which our laws know; they were quartered here, as I take it, agreeable to an act of the British parliament; they were ordered here by your Sovereign and mine. I expect hereafter to be more particular on this head.

Let me here take a method very common with another order of men.—Let me remind you of what is *not* your duty.

Gentlemen, great pains have been taken by different men, with different views, to involve the character, the conduct and reputation of the town of Boston, in the present issue. Boston and its inhabitants have no more to do with this cause, than you or any other members of the community. You are, therefore, by no means to blend two things, so essentially different, as the guilt or innocence of this town and the prisoners together. The inhabitants of Boston, by no rules of law, justice or common sense, can be supposed answerable for the unjustifiable conduct of a few individuals hastily assembled in the streets. Every populous city, in like circumstances, would be liable to similar commotions, if not worse. No rational or honest man will form any worse opinion of this metropolis for the transactions of that melancholy night. Who can, who will, unnecessarily interest themselves to justify the rude behaviour of a mixt and ungovernable multitude? May I not appeal to you, and all who have heard this trial, thus far, that things already wear a different aspect

from what we have been, heretofore, taught to expect? Had any one told you some weeks ago that the evidence on the crown-side would have appeared in its present light, would you have believed it? Can any one think it his duty to espouse the part acted by those assembled in King street?—I think not; but lest my opinion should not have any weight, let me remind you of an author, whom, I could wish were in the hands of all of you; one whom I trust you will credit. I am sure you ought to love and revere him. I wish his sentiments were engraven in indelible characters on your hearts. You will not suspect him of being unfriendly to liberty; if this cause and its event must, at all hazards, be held as interwoven with a matter so foreign to it. I allude to the third letter of the FARMER of Pennsylvania to his countrymen.

"The cause of liberty," says that great and good writer, "is a cause of too much dignity to be sullied by turbulence and tumult. It ought to be maintained in a manner suitable to her nature. Those who engage in it, should breathe a *sedate*, yet *fervent spirit*, animating them to actions of *prudence, justice, modesty, bravery, humanity*, and magnanimity."

What has there transpired on this trial, savouring of any of these virtues? Was it *justice* or *humanity* to attack, insult, ridicule and abuse a *single* sentinel on his post? Was it either *modest, brave* or *magnanimous* to rush upon the points of fixed bayonets, and trifle, vapour, and provoke at the very mouths of loaded muskets. It may be brutal rage, or wanton rashness, but not surely any true magnanimity.

"I hope, says the same eminent writer, my dear countrymen, that you will in every colony be upon your *guard against those*, who AT ANY TIME endeavour to stir you up, under *pretence of patriotism*, to *any* measures DISRESPECTFUL to *your Sovereign* and our *mother country*."

By this it should seem, as though the Farmer never expected *any period* would arrive, when *such measures* would be warrantable. Now what more *disrespectful* to our *parent* country, than to treat with contempt a body of men stationed, most certainly by the consent of *her* supreme legislature, the parliament of *Britain?* What more *disrespectful* of *our common sovereign*, than to assume the sword of justice, and become the avengers of either public or private wrongs? Though the soldiers who appeared in the earlier part of the evening, in Cornhill, acted like barbarians and savages they had now retired, and were now confined in their barracks: what though an impertinent boy had received unjustifiable correction from the Sentinel; the boy, and the persons in Cornhill, must have recourse only to the law for their redress. Courts of law are styled "*vindices injuriarum*," the avengers of injuries, and none others are to assume this prerogative. The law erects itself as the supreme, dernier resort, in all complaints of wrong; and nothing could more essentially sap our most important interests, than any countenance to such dangerous encroachments on the domains of municipal justice.

But finally, to finish with the justly celebrated Farmer—"*Hot, rash, disorderly* proceedings *injure* the reputation of a people as to *wisdom, valour*, and *virtue*, without procuring the *least benefit*." Thus have you the sense of this great authority *with us*. And let me ask all those, who have thought the cause of their country connected with the agents of the assembly in King street, whether the *proceedings* of that unhappy night, were *hot, rash*, or *disorderly?* If they were, have they not, in the opinion of this great friend of liberty, *injured* our reputation, as to *wisdom, valour*, and *virtue;* and that too, without procuring the *least* benefit?

Who then would sacrifice his judgment and his integrity, to vindicate *such* proceedings.

To what purposes the soldiers were sent; whether it was a step warranted by sound policy or not, we shall not enquire; we are to consider the troops, not as the instruments for wresting our rights, but as fellow citizens, who being to be tried by a law, extending to every individual, claim a part in its benefits—its privileges—its mercy. We must steel ourselves against passions, which contaminate the fountain of justice. We ought to recollect, that our present decisions will be scanned, perhaps through all Europe. We must not forget, that we ourselves will have a reflective hour——an hour, in which we shall view things through a different medium——when the pulse will no longer beat with the tumults of the day——when the conscious pang of having betrayed truth, justice, and integrity, shall bite like a serpent and sting like an adder.

Consider, gentlemen, the danger which you, and all of us are in, of being led away by our affections and attachments.——We have seen the blood of our fellow men flowing in the streets. We have been told that this blood was *wrongfully* shed. That is now the point in issue. But let it be borne deep upon our minds, that the prisoners are to be condemned by the evidence *here in Court* produced against them, and by nothing else. Matters heard or seen abroad, are to have no weight: in general they undermine the pillars of justice and truth. It has been our misfortune, that a system of evidence has appeared in the world against us. It is not our business to blame any one for this. It is our misfortune, I say. It should be remembered, that we were not present to cross examine: and the danger which results from having this publication in the hands of those who are to pass upon our lives, ought to be guarded against. We say we are innocent, by our plea, and are not to be denounced guilty upon a new species of evidence, unknown in the English system of criminal law.

But as though a series of *ex parte* evidence was not enough, all the colours of the canvass have been touched in order to freshen the wounds, and by a transport of imagination, we are made present at the scene of action. The prints exhibited in our houses have added wings to fancy, and in the fervour of our zeal, reason is in hazard of being lost. For as was elegantly expressed, by a learned gentleman at the late trial, "The passions of man, nay his very imaginations are contagious." The pomp of funeral, the horrors of death have been so delineated, as to give a spring to our ideas, and inspire a glow incompatible with sound, deliberative judgment. In this situation, every passion has alternately been predominant. They have each in its turn, subsided, in degree, and they have sometimes given place to despondence, grief and sorrow. How careful should we be, that we do not mistake the impressions of gloom and melancholy, for the dictates of reason and truth. How careful, lest borne away by a torrent of passion, we make shipwreck of conscience.

Perhaps, you may be told, gentlemen, as I remember it was said, at the late trial, that passions were like the flux and reflux of the sea—the highest tides always producing the lowest ebbs. But let it be noticed, that the tide, in our political ocean, has yet never turned; certainly the current has never set towards the opposite quarter. However similies may illustrate, they never go for proof.—Though I believe, that it will be found, that if the tide of resentment has *not* risen of late, it has been because, it had reached the summit.——In the same mode of phraseology, if so homely an expression may be used; perhaps, as the seamen say, it

has been high-water slack—but I am satisfied the current has not yet altered its course, in favour of the prisoners at the bar.

Many things yet exist sufficient to keep alive the glow of indignation. I have aimed at securing you against the catching flame. I have endeavoured to discharge my duty, in this respect:—What success will follow those endeavours, depends on you, gentlemen. If being told of your danger will not produce caution, nothing will. If you are determined in opinion, it is in vain to say more; but if you are zealous inquirers after truth; if you are willing to hear with impartiality—to examine and judge for yourselves—enough has been said to apprize you of those avenues, at which the enemies of truth and justice are most likely to enter—and most easily to beset you.

Gentlemen of the Jury,

I shall now, *for argument's sake only*, take it for grnated, that *the fact of killing*, had been proved upon all the prisoners: you are sensible this is not really true; for as to this point, there are several of the prisoners upon whom this *fact* is not fixed. But as I shall hereafter take occasion to consider the distinct case of each prisoner, as he is affected by the evidence, I at present choose, to avoid confusion, and apply myself to the full strength of the crown; and, upon a supposition, that *all* the prisoners were answerable for *the act* of *any* one, see how the prisoners are chargeable, by the evidence already offered, with the crime of *Murder*:—or rather endeavour to point out to you those facts, appearing by the evidence on the crown side, which will amount, in law, to a *justification*, an excuse, or, at least, an extenuation of their offence.—For we say, that give the evidence for the king its full scope and force, and our offence is reduced, at least to Manslaughter: in which case, we claim the privilege of that law, by the sentence of which, if guilty we must suffer the pains of death.—a privilege we can never again claim—a privilege, that by no means implies exemption from all punishment: the offender becomes liable to imprisonment, for a year—incurs a forfeiture of all goods and chattels: and, till he receives the judgment of law, is to all intents a felon, subject to all the disabilities and other incidents of a felon. Without taking up time, in attending and discussing points, no way pertinent to the present issue; without a tedious recapitulation of circumstances, with which, I take it, we have no more concern, than either of you, gentlemen; I say, passing over all these matters as foreign to *this* trial; let us state evidence appearing even from the crown witnesses.

These witnesses, (whose testimony I shall not consider in the order they were produced) inform you, that in the former part of the evening a number of soldiers rushed from some of the lanes near the Guard House, or as Col. Marshall supposes, from the Guard House itself. But some circumstances he relates, as to their dress, may render it doubtful, whether he is right in this point. Soldiers on guard have a peculiar regimental habiliament, which they never dare put off: and if I am rightly instructed, no soldiers, but those on duty, are suffered to be at the Guard House at those hours. However, thus much is certain, that being dressed in short jackets or working coats, proves them not to be of that particular party who had mounted guard at this time.

The cry was "where are they—damn them, where are they!" They brandish their weapons, and proceed to Cornhill. What those weapons were the witnesses say differently. But it should be mentioned, as we go along, that the soldiers of the twenty-ninth are never allowed to wear swords or cutlasses.

As these soldiers pass down Cornhill, they assault, abuse and attack people. The soldiers in their turn are beaten. One has his wrist broke—and the general cry soon after was—"they are beaten—they are drove into the barracks!"

Some part of this conduct may hereafter be accounted for, and other parts of it may stand in a very different light. But we are ready to admit, that their behaviour was altogether unjustifiable—for we don't look upon ourselves as any way concerned in their conduct.—Conduct which, if some of the witnesses are not mistaken, seems more like that of madmen and barbarians, than like reasonable creatures. If *they* acted like savages or ruffians, what is that to *us?* This evidence, therefore not applying to this case, we are injured if it has any influence to our prejudice. Being foreign to the issue, we humbly conceive it ought never to have been introduced;—or being introduced, it ought to be rejected, in our determining the guilt or innocence of the prisoners.

[☞ Mr. Josiah Quincy then proceeded to a minute detail of the crown evidence, pointing out, as he went along, those circumstances that favoured the prisoners; and commenting chiefly on those facts, which served to refute or invalidate the positions of the Council for the crown; by showing an assault and attack upon *the Sentry.* He then reviewed those parts of the evidence, which had a tendency either to prove insult, abuse, or assault and battery of *the party:* he pointed out the various quarters, from which all these, but especially the assault and battery proceeded; and from the facts, time and circumstances testified; inferred the attack to have been on various sides at the same instance. From the noises, violence and rattling of the guns he drew other consequences useful to his cause. From the inattention of some, and the forgetfulness of others; from the tumult, fright, confusion and passions in the scene, he made such deductions as might account for the contrariety and seeming incompatibility of the evidence.

He next very particularly stated the evidence for the prisoners, as he had been instructed it would turn out on examination; and as he opened his evidence, he carefully remarked its conformity to, and connexion with, many parts of that already exhibited by the counsel for the King.—He then called the witnesses, who swore as follow.]

James Crawford—sworn.

Q. Did you observe on the evening of the 5th of March last, any of the inhabitants armed, or any commotions in the streets before the firing? *A.* On the night of the 5th of March last, a little after dark, as I went home, I met uncommon numbers of people with sticks; at Calef's corner there were more than a dozen inhabitants; I met some also in Quaker lane, and by Mr. Dalton's, going towards King street; I looked upon it to be more than what was common. Their sticks looked not to be common walking canes, but pretty large cudgels.

Archibald Gooll—sworn.

Q. Did you observe any such commotions at that time? *A.* Going over the Swing bridge, the evening of the 5th of March, I saw people running from all corners, with sticks and instruments in their hands; I being a stranger was afraid to go home; when I came to Faneuil hall I met with a young man, he said he would conduct me home: as I came to Green's lane I met great numbers, twenty or thirty together, and the streets were as full of commotion as ever I saw in my life. Q. What

sort of sticks were they that they had? *A.* Uncommon sticks, like what are pulled out of hedges. *Q.* What part of the town was you in when you first noticed these commotions? *A.* I was crossing the Swing bridge. This was before any bells rang.

Archibald Wilson—sworn.

Give the Court and Jury an account of the transactions in Dock square, on the evening of the 5th March last. *A.* On that evening I was in company with some gentlemen in Mr. William Hunter's house near Dock square, a certain gentleman came in, and asked how we came to be sitting there when there was such trouble betwixt the soldiers and inhabitants; this was between 8 and 9 o'clock. Some of the company went and looked out of the window at the foot of Exchange lane; I came into the Vendue room and went to the balcony, there were so many in it I was afraid it would fall down; I withdrew from thence and looked out of the window; I saw a great number of people come from the north end; they made two or three sundry attacks up that lane where the barracks which are called Murray's or Smith's barracks were. *Q.* How were they armed that came from the north end? *A.* They had sticks or staves, I do not know what they are called. *Q.* Was it a moonlight night? *A.* I do not remember seeing the moon, but it was very light. *Q.* What number of persons did you see in Dock square? *A.* I cannot say, I judge there might be about two hundred in all; they left the square and went three different ways, some up the main street, some up Royal-exchange lane, and some up the other lane; they gave two or three cheers for the main guard; about the space of five or six minutes after the cheers I withdrew from that house and went up Royal-exchange lane; and when I was about the middle of the lane the guns went off. I turned, and came down the lane and went home. *Q.* Did you hear the bells ring? *A.* I heard the bells ring, but what time it was I do not know. *Q.* Was it before you went up the lane? *A.* Yes. *Q.* Did numbers cry for the main guard, or but one or two? *A.* Numbers did. They also cried fire. I said it was very odd to come to put out a fire with sticks and bludgeons.

William Hunter—sworn.

I was in my own house, and Mr. Wilson, the former witness, with me; we heard a noise, and Mr. Mitchelson came in and told us there was a disturbance amongst the inhabitants and soldiers; I went to the Vendue balcony, and saw great numbers coming up from the north end, with large sticks in their hands, most of them I saw went in parcels up to the barracks, and then came down in numbers. This they did several times, as they gathered from the north end. *Q.* Were the bells ringing? *A.* I do not remember; a gentleman came up with a red cloak, they gathered round him, and he stood in the middle of them, and they were all very quiet; he spoke to them a little while and then he went off, and they took off their hats and gave three cheers for the main guard; they went up Royal-exchange lane as fast as they could, I went after them, and some of the company at my house went up the lane also. *Q.* Was the man who spoke to these people a tall or short man? *A.* Pretty tall. *Q.* How was he dressed? *A.* He had a white wig and red cloak, and after his talking a few minutes to them, they made huzzas for the main guard.

David Mitchelson—sworn.

I am the person that came up stairs and told the witness examined before me, that there was a disturbance in the street. The whole I have to

say is this—Coming home that evening from a friend's house in Fore street, I called at a house in Union street; turning the corner of Fore street I heard a noise which drew my attention immediately, it seemed to come from the Post-Office, or thereabouts: immediately I went to see what the matter was. At the bottom of Royal-exchange lane, I asked a man that was at a distance what the matter was? He said it was a squabble betwixt the inhabitants and soldiers; I then stood at the bottom of the lane, I had not long stood there, till I was obliged to go away, the party, engaged with the soldiers, having been routed, as I thought, came rushing down towards where I stood: I went into Mr. Hunter's, found some gentlemen there; I told them they were very quiet indeed, considering there were such a number of people in the street. We went into the balcony and stood there to see the transactions below, and the only thing material I can recollect that passed, was this: I saw a pretty large number of people assembled together, drawn there, I apprehended, by the noise of them that were first engaged with the soldiers. It was proposed by several of them, to call out fire!—Fire was called several times, and then the bells were set a ringing. This drew a great concourse of people, not knowing but it was fire. The greatest part had sticks of various sorts; they made several attempts to get up a lane leading to Murray's barracks, but I suppose meeting with opposition there, they came down as if they had been pursued. After making several such attempts, they assembled in various little knots, with various leaders, I suppose every party had a leader. I heard them propoae, let us go up and attack the main guard. *Q.* Recollect the words as near as you can. *A.* I cannot recollect the precise words, but they were to that very effect. Some of them went up Royal-exchange lane, part of them through the other lane (called Boylston's alley) and part up Cornhill. *Q.* Who led the party that went up Cornhill? *A.* I cannot tell, it was not light enough, and the confusion together, I could not tell which was leader or which was follower. *Q.* Did the bells ring then? *A.* Yes. *Q.* What bells? *A.* I do not know what bells they were. *Q.* Did you notice if the largest party went up Cornhill? *A.* Yes, they did. After they went from that place of the street which I could see from the balcony, the street was then particularly clear of them, except the people coming from Union street and the other streets. Anxiety to know what might happen in King street, led me to take my hat and go and see: When I was about half way up the lane, the guns were fired, and I saw the flashes of some of them. I then turned and came down. *Q.* How many people do you imagine were assembled in Dock square, when the greatest number were together? *A.* I imagine two hundred. *Q.* Did you see a man with a red cloak and white wig? *A.* Yes, he made a considerable figure there. *Q.* Was he in the attitude of speaking, and they of attention? *A.* Yes. *Q.* Could you hear what he said to them? *A.* No, but after he had harrangued them about three minutes, they huzza'd for the Main Guard.

John Short—sworn.

Give the Court and Jury an account of any commotions you saw that evening. *A.* The evening of the 5th March, after the nine o'clock bell had rung, I heard the bells ring again, I supposed for fire, the people in the neighbourhood asked where it was, I said I would go and see; I went up as far as Faneuil Hall, and to Mr. Jackson's shop, there were a number of people in Cornhill at the time; I immediately came down

again, and went on board an oyster-boat, staid there about a quarter of an hour, and heard the guns go off. Q. Did you see anybody at the market take out the feet and break the stalls? A. No I did not. Q. Did you see any collection of people there? A. Yes, I asked what was the matter; I was told a soldier had hurt an oyster man. Q. Did you see a number of people with anybody at their head? A. I did not.

Benjamin Davis—sworn.

The evening of the 5th of March, I spent at the North end; a little after nine I left the house to go home, I live in Green's lane, and my nearest way lay through Dock square; I heard a number of people and great noises. I soon found it was a quarrel, I stopped at the corner of Jenkins' lane some time; I saw the people collected close to Boylston's alley, and learned, that it was the town's people and soldiers quarrelling, I plainly heard that the sound was like people fighting with clubs. Two young men came up to me, and said, will you go and help us to fight the soldiers; I said no, I do not intend to, one of them had a cloak, and threw it off into my arms, and then said, if you will not go, hold my cloak, and went away with the other, inquiring where were any clubs or cord-wood sticks, they hallooed fire! fire! And that collected a few people, about one dozen or so, presently the little knots of people passed up the passage way by the pump, and there was a general run down the street as fast as they could run, I went into Mrs. Elliot's gate, and I saw seven, eight, or ten soldiers run up the alley that leads from her house to King street, they had something in their hands, whether it was clubs or other weapons, I cannot tell; whether the bells had begun to ring before that I cannot say, it was the Brick meeting bell I first heard; I staid in Mrs Elliot's till the bells were done ringing, I left the cloak with her. Q. Which way were these nine or ten soldiers going? A. They came down from the alley by the barracks, and run up Jenkins' alley by Mrs. Elliot's house, I passed through this alley and went into King street, and saw some with buckets, the engine was in King street, but nobody with it;—I went up by the north side of the Town House and saw several knots of people collected, some at Jackson's corner, some by the Town House, all round in little knots; I went from one knot to another, to see if I could learn what the matter was, I walked to the south side of the Town House, and the next thing I heard, was huzzaing in King street, and then these little knots that were collected, answered the huzza, and went down towards King street, I went by the south side of the Town House, and stopped at Mr. Price's office and had an opportunity of seeing what passed on the other side of the way. Col. Marshall, I think, must be mistaken in what he says relative to the shade of the moon's being on the north side, for I remember well, I went to the south side of the Town House, on purpose that I might be in the shade and see more clearly what was doing on the opposite side of the way. I saw the Sentinel standing with his back to the Custom House door, and a number of people round him, boys and men. Q. Was the Sentry in the shade? A. No, I saw him very plain standing on the Custom House steps, I heard a considerable noise, the boys were laughing and saying fire! and why do you not fire? I saw the Sentinel bring his piece upon a level as if to fire, and the people gave back, and he put it up again. I found the numbers were increasing, and, while I was standing there, two men without hats on, came up to the Main Guard, and said, you must send assistance directly, or the Sentry will be murdered, the officer I observed was quite a young officer, and there were a number of soldiers standing with their watch coats on, whether they or any soldiers went into the Main Guard I

cannot say, I heard very soon the word given, "Guard," and bid take off their watch coats; there came out about seven, I think their guns were not shouldered, but they had them in their right hands, walked across the street, and took their stand near the Sentry box, but whether in a half moon or circle I cannot tell, the people crowded round them, I heard a great deal of confused noise, a general confusion of noises, and there I stood till the guns were fired. *Q.* Did these men, one of which gave you the cloak, go towards the Market? *A.* Yes. *Q.* Did you hear a noise like the breaking of the stalls? *A.* No.

Shubael Hewes—sworn.

Give the Court and Jury an account of what you saw in the streets, on the 5th of March last. *A.* I spent the evening with an acquaintance near the Town Dock, sitting in the room, the master of the house came into the room, and said, fire was cried, and the bells a ringing: as I belonged to the engine, I was the first out of the door, with my surtout and stick, when I came out, I saw a man running to where the Porters stand, I thought I should meet our engine coming down the lane or Cornhill, and when I came round by the Market, I saw across the Market a number of people coming from the northward; I thought the fire was out, and that it had been at the North end. I stopt by Col. Jackson's a considerable time, at last somebody came along; I asked where is the fire, they said there is no fire but a dispute betwixt the inhabitants and soldiers by Murray's barracks. I moved down again and stopped where I had before; the street was full as usual when fire is cried: at last I saw a number of young people get foul of the stalls in the Market, pulling out the legs of them, I do not remember whether I said any thing to them or not: I staid there a while, and saw no disturbance, nor heard a great noise; the man who was with me said, we have no business with the soldiers nor with their disputes, and we returned to the place we came from, and staid there till the guns were fired. *Q.* Where did they come from that got foul of the stalls? *A.* Some from the northward, and some by Hubbard's ware-house. *Q.* How many were there of them? *A.* Six or seven.

James Selkrig—sworn.

Q. Was you at Mr. Hunter's house, the 5th of March last? *A.* I was that evening there in company with some gentlemen, and to the best of my remembrance betwixt eight and nine o'clock, some of the company said their is some noise in the street; Mr. Hunter said it is an alley that there is noise enough in very often. A gentleman soon after came in and said there is something bad in the street, you had as good go and see what it is, three of the company went to the balcony, I went to the window fronting the street. I saw considerable numbers of people coming from the North end, all armed, or the greatest part of them, in the same manner, with white sticks. They made attacks on the barracks, and were always drove back; always when a fresh party came from the north part of the town, they made a new attack, there were about five or six different attacks made. In the middle of the street I saw a large man, with a red cloak and white wig, they gathered round him, and he spoke two or three minutes, and they gave some different cheers for the Main Guard, and I think for the Neck; they said they would do for the soldiers; when they turned round that corner where the stone store is, they beat the stone with their weapons, and said they would do for the soldiers. Some went up Royal-Exchange lane, some went up Jenkins' lane, and some by the Post-office. *Q.* How many people do you think

there might be in the whole? *A.* Betwixt two and three hundred. *Q.* Were the bells a ringing? *A.* I cannot tell, I saw them all go away, I came down and found the gentlemen gone, I went into the alley and heard the first gun fired, I then went home, and know no more of it. *Q.* Was that expression, we will do for the soldiers, uttered by a number or by a few? *A.* By a great number, and they struck their weapons against Simpson's stone store, as they said it.

Archibald Bowman—sworn.

Q. Was you at Mr. William Hunter's on the evening of the 5th of March last. *A.* Yes. That evening I was at his vendue-room, at the foot of Royal-Exchange lane, I heard some noise; I cannot say who came up; but a little after dark there came up two gentlemen, who said there was a disturbance in the street. I immediately went to the front window, some of the company into the balcony, where I afterwards went, I saw a number of people hallooing fire, fire, in different quarters. Numbers inquiring where the fire was; they gathered in a large body; some went up by way of the Post-office, some went up the lane by the pump, and some came down forcibly as if chased: they whistled through their fingers and cried fire: Amongst the rest I observed a gentlemen with a red cloak and white wig, the crowd gathered round him, they staid a little while with him, and then drew off and huzzaed for the main guard, they then dispersed, some went up Royal-Exchange lane, some went up Jenkins' alley, and some went up Cornhill, I saw no more of them. *Q.* How many people were there when they were talking with the gentleman? *A.* I cannot say how many there were, there was a great number. *Q.* Did you see them strike with their sticks at Mr. Simpson's store? *A.* No.

William Dixon—sworn.

Q. Was you of the company at Mr. Hunter's? *A.* Yes, I was there that evening; a gentleman came in and said there was a disturbance in the street, I went down to the lower room, and went to the balcony, and saw people going up that alley where the barracks are. *Q.* Did you hear the last witness examined, do you confirm all he mentioned? *A.* No, not all of it, the people went up to the alley, and ran down quick as if they had met with opposition, they stood about the pump, they increased from the North end to pretty large numbers; then gathered together in a crowd opposite to where I stood, and huzzaed for the the main guard.

John Gillespie—sworn.

On the evening of the 5th of March I went from my own house in Queen street, about seven o'clock, to spend the evening with some company at Mr. Sylvester's, at the South end; in my way I met not less than fifty people, with white sticks in their hands, in small parcels, and the company all observed they met with numbers of people, and said they were apprehensive of the consequences. Somebody came in and said there was fire, Mr. Fleeming said he would send his man to see where the fire was, and desired us not to be uneasy, for he had heard it was only to gather people to fight the soldiers, or to this effect: I was uneasy, however, and came away to go home. I met a good many people with sticks, and bags, and some other things. I met Mr. Fleeming's man coming back, and he said it was no fire, but the soldiers and inhabitants fighting: I saw two engines, and the people putting their buckets and bags in people's houses. I inquired where the fire was; I got the same answer, no fire, but the soldiers and inhabitants fighting. I heard some say come let us go back, others said no. I saw Mr. Knight standing at his own door, and stopt but very little time, left him and came to the head

of King street. I heard somebody say damn them why do not they break the glass. I imagined somebody had got into the Guard House, and that they wanted to break the glass to get them out. I went home, and in about ten minutes, I heard guns go off. Q. Was it soldiers or inhabitants that wanted to break the glass? A. It was the inhabitants.

Thomas Knight—sworn.

On the 5th of March I was in King street soon after the bells had rung for nine, saw the Sentinel as usual, but no disturbance; I went home and staid about half of an hour; bye and bye I heard the bells ring, which I took for fire. I ran to the door, the people were passing pretty thick, some with buckets, some with bags, and numbers with sticks and clubs; they said there was no fire, but some disturbance with the soldiers and inhabitants; I returned into the room sometime, but feeling uneasy, went to the door again, and saw several companies of people pass, one company consisting of eight or ten had white sticks or clubs in their hands; one of them hallooed out, damn their bloods let us go and attack the main guard, and knock them to hell first. There was one in the company made a stop, and said I will go back and get my gun, or let us go back and get our guns, I cannot tell which. I thought it was best to stay in the house; and tarried about two or three minutes in the room; I felt very uneasy, and walked to the door again, and being there about a minute or two, I heard one gun fired, in about one or two seconds I heard another, and so on till five, six or seven were discharged. It was all in about twelve or fourteen seconds at the farthest.

John Cookson—sworn.

Q. Was you at the Green Dragon, on the evening of the 5th of March, in company with some gentlemen there? A. Yes What observation was made on the ringing of the bells, by any of the company? A. Some one in the room said it was not fire, but a rumpus. Q. Did any particular person of that company there, say it is no fire but a rumpus with the soldiers, and I am prepared for them, and immediately take a pistol or pair of pistols out of his pocket? A. Some one observed there was a rumpus, but I saw no pistol.

William Strong—sworn.

On the evening of the 5th of March I was at Mr. Marston's, several of us were standing by the fire: we heard the cry of fire, some said we will go out and see where the fire is. I went and saw several people running to and fro, I asked what the matter was, they said a soldier had killed a boy. I was answered in that manner by another; some people said we will go back again and get our sticks: I did not see any number of people, but a few running up to King street, one of them struck the ground with his stick and shivered it. I then went into King street and was coming away again, when I heard a huzza and a number of feet behind me, and I stood to let them pass; there might be about ninety; they ran up King street huzzaing. I walked after them, when they came opposite the Custom house, they stopped, and some said that is the fellow that used the inhabitants ill; another contradicted them and said it was not him; upon that the people encroached on the Sentinel; I was in the midst of the people, and he retreated back and they went forward, at last I saw him go on the steps of the Custom house, and they went closer, and he set his back to the door and loaded. I heard the ball go down distinctly. Q. How many people were there then? A. About ninety or more. Q. Were they boys? A. The generality of them were young men. He presented his gun, and said keep off or I will fire upon you; the reply was, fire, fire and be damn'd. There was a

man standing by me, he had the butt end of a bat in his hand, and said he would throw it at the Sentinel; I said do not, for he will fire at whatever place it comes from. Whether he threw it or not I do not know, for I left him and went to Mr. Sherwin's door. I was saying it was imprudent to attack a Sentinel on his post, somebody said he was disarmed; I thought so too, for I saw the glittering of arms; I walked to the Custom House steps, curiosity led me to see if they were so prudent as to fasten the Custom House door; I tried the latch, and it was fast; a fellow said to one of the soldiers, damn you why do you turn your bayonet this way, turn it the other way. I thought I was not safe there, but went to my old place, and stood there a few minutes; I thought I heard two guns cock, immediately I heard one go off, soon after another, and I think four more. The people said, where I was standing, they fired nothing but powder; coming opposite to the soldiers, I saw two men lay, one on the right and the other on the left, on their backs; they were dead. *Q.* Did you see anything hit the sentinel? *A.* I believe there were snow balls thrown, but they fell short of him. *Q.* These people that were round the sentinel, had they clubs? *A.* Yes, some of them.

Five o'clock, P. M. the Court adjourned till next morning, Friday, nine o'clock.

Friday, nine o'clock, the Court met according to adjournment, and proceeded.

Dr. Richard Hirons—sworn.

A little after eight I heard a noise and disturbance in the street, I went out to know what it was, and was told there was a difference between the town's people and soldiers.—I saw several soldiers pass and repass, some with bayonets and some with clubs; I stood at my door, I observed the noise seemed to come from towards the market; I saw a number of people running to and fro across the bottom of the street. I shut my door and went in about eight or ten minutes. I heard a noise like a single person running through Boylston's alley with great violence; he ran as I took it towards the barrack gate, and cried out, town born, turn out, town born, turn out. I heard this repeated twenty or thirty times, I believe, it was the constant cry. I remember after coming out the second time, to hear the voice of a person which I took to be Ensign Maul, say, who is this fellow, lay hold of him. I did not hear a word pass betwixt the people that went backwards and forwards, and the sentinel at the barrack gate, nor from the sentinel to them; this cry of town born, turn out, was repeated for seven or eight minutes, when I heard the voices of a great many more. *Q.* Were they soldiers? *A.* I do not know, they might be soldiers; from the first of that cry it might be a quarter of an hour or more, they seemed to retreat and come on again, and struck their sticks very hard against the corner of the house. The collection of such a number, with the noise of the clubs, induced me to lock my door, put out my light in the front part of my house, and to go up stairs into the chamber fronting the barracks; when there, I observed four or five officers of the 29th, standing on their own steps, and there might be betwixt twenty or thirty of the town's people surrounding the steps. About that time came a little man, who he was I do not know; he said, why do you not keep your soldiers in their barracks, they said they had done every thing they possibly could, and would do every thing in their power to keep them in their barracks; on which he said, are the inhabitants to be knocked down in the street, are they to be murdered in this manner; the officers still insisted they had done their utmost, and would do it, to keep the

soldiers in their barracks; the same person then said, you know the country has been used ill, you know the town has been used ill, we did not send for you, we will not have you here, we will get rid of you, or we will drive you away; which of the last expressions I cannot say, but it was one or the other; the officers still insisted they had done their utmost, and would do it, to keep the soldiers in their barracks, and begged the person to use his interest to disperse the people, that no mischief might happen; whether he did address the people or not, I cannot say, for the confusion was so great I could not distinguish. *Q.* How was that man dressed? *A.* He was a little man, I think in a surtout; immediately the cry of home, home, was mentioned; I don't recollect seeing any person go away at the first cry, and there was such confusion I could not tell what was said, but in five minutes afterwards the cry home, home, was repeated, on which the greatest part of them, possibly two thirds, went up Boylston's alley towards the Town-house, huzzaing for the main guard. *Q.* What number were there? *A.* A considerable number. I then observed more of the town's people come from towards the Market; there was a squabble and noise betwixt the people and the officers, but what was said I could not hear. The next thing I recollect in the affair was, a little boy came down the alley, clapping his hand to his head, and cried he was killed, he was killed; on which one of the officers took hold of him, and damned him for a little rascal, asking him what business he had out of doors; the boy seemed to be about seven or eight years old. Some little time after that, I saw a soldier come out of the barrack gate with his musket, he went directly facing the alley, in the middle of the street, and kneeled down on one knee, and said now damn your bloods, I will make a lane through you all; while he was presenting, Mr. Maul, an Ensign, with either Mr. Dixon or Mr. Minchin, I do not know which, came after him, immediately laid hold of him, and took the musket from him, shoved him towards the barrack, and I think gave him the musket again, and charged him at his peril to come out again. I do not recollect any discourse that passed between the town's people and officers, there was still such clamour and confusion, that I could not hear what passed; but in a little time either the soldier who came out before, or another, came out again, he repeated much the same words as the other, he had his gun in his hand, he did not offer to kneel down, but used the same expressions. *Q.* Did he present his firelock? *A.* He was presenting, when Mr. Maul knocked him down, took his musket from him, drove him into the barracks, and I think the barrack gate was then shut; about this time I recollect I heard Dr. Cooper's bell ring, I heard some officer say, go and stop that bell from ringing, whether anybody went or not, I cannot say, but it did not ring a great while: About this time I saw Capt. Goldfinch of the fourteenth, on the steps with the officers of the twenty-ninth; there came up a little man, who he was I do not know, but in a much different manner from what the other did. *Q.* How was he dressed? *A.* He had on a great coat or surtout of a light brown, he requested the soldiers might be kept in their barracks, and that the officers would do every thing in their power to keep them there, the officers said they had, and would do so; and as the soldiers were in their barracks, begged the people might go away; this little man said to the people, gentlemen, you hear what the officers say, that the soldiers are all in their barracks, and you had better go home; on which the cry was, home, home. *Q.* Do you suppose this was after you heard the bell ring? *A.* Yes: on which a great many went up the alley again, and I heard the expression, let us go to the main guard: Capt. Goldfinch was

still on the steps, and I heard his voice still talking, and I think he desired every person would go away; while he was talking, I heard the report of a musket. Q. How long was that after the cry of home, home? A. It was not many minutes; in a few seconds I heard the report of a second gun, presently after that a third; upon the firing of the first gun, I heard Capt. Goldfinch say, I thought it would come to this, it is time for me to go. I then saw a soldier come down the alley from Cornhill, and went up to the steps where the officers stood, and said, they fired from or upon the main guard. I then heard the drum at the main guard beat to arms, I came down stairs and did not go out till I was sent for to some of the wounded people. Q. At the time when the first soldiers came out, were there a body of people in the street before the barracks?—— A. There were some, but I suppose the most part were in the alley, there were several about the meeting-house. Q. Did they say or do anything to the soldiers who came out with their muskets? A. The officers immediately took hold of them and turned them in. Q. Was you sent for to Maverick? A. Yes. Q. Did he say anything to you? A. Yes, about two hours before his death, I asked him concerning the affair, he said he went up the lane, and just as he got to the corner, he heard a gun, he did not retreat back, but went to the Town-house, as he was going along he was shot: It seems strange by the direction of the ball, how he could be killed by the firing at the Custom-House; it wounded a part of the liver, stomach and intestines, and lodged betwixt the lower ribs, where I cut it out; the ball must have struck some wall or something else, before it struck him. Q. Where did he say he was when he was wounded? A. He was betwixt Royal-exchange lane and the Town-house, going up towards the Town-house.

Capt. John Goldfinch—sworn.

Q. Was you at Murray's barracks that evening? A. The 5th of March, about nine in the evening, I was passing over Cornhill, I saw a number collected by the passage to the barracks, I went towards it and two or three called me by name, and begged me to endeavour to send the soldiers to their barracks, or else there would be murder, with difficulty I got to the entrance of the passage, the people were pelting the soldiers with snow balls, the soldiers were defending themselves at the entrance. Q. Had the soldiers cutlasses? A. No, by no means, I think one of them had a fire-shovel, as soon as the soldiers knew me they with my persuasion went to the bottom of the passage, when I got there, I saw some officers of the twenty-ninth, I told those officers I suspected there would be a riot, and as I was the oldest officer I ordered the men to the barracks and they were immediately confined; the mob followed me and came to the gate of the barracks, and abused the men very much indeed, with bad language, so that the men must have been enraged very much, but by the vigilance and activity of the officers, the men were kept within bounds; the mob still insulted the men, dared them to come out, called them a pack of scoundrels, that dared not come out to fight them, and it was with difficulty they were kept in their barracks, I never heard such abuse in my life, from one man to another. A little man came up and spoke to the people, and desired them to go home, as they saw the officers used their best endeavours to keep the men in their barracks; immediately the best part made towards the passage to Cornhill, I suppose a body of about forty or fifty people. I thought it necessary to stay some time to assist the officers in keeping the men in their barracks, in a quarter of an hour or twenty minutes after the people had moved off, I heard some guns fire, and the main guard drum beat to arms; I told Mr. Dix-

on it was necessary for me to move off, to join my own regiment. The same evening, about half an hour before this affair happened, I was in King street, and was accosted by a barber's boy, who said, there goes the fellow who hath not paid my master for dressing his hair, fortunately for me, I had his receipt in my pocket, the Sentinel said, he is a gentleman, and if he owes you anything he will pay it: I passed on without taking any notice of what the boy said.

Benjamin Davis, jun.—sworn.

Q. On the evening of the 5th March last, near the bottom of Royal-Exchange lane, I saw a mob by Mr. Greenleaf's, I went right along into King street, I saw the Sentinel; a barber's boy was there crying, and said the Sentry had struck him, and asked him what business he had to do it: I went home and staid at the gate in Green's lane some time, Samuel Gray (one of the persons killed that night in King street) came along, and asked where the fire was? I said there was no fire, it was the soldiers fighting, he said, damn it, I am glad of it, I will knock some of them on the head; he ran off, I said to him, take heed you do not get killed in the affray yourself, he said, do not you fear, damn their bloods. Q. Had he a stick in his hand? *A.* He had one under his arm. Q. How long was this before the firing? *A.* I do not suppose he could have got into King street two minutes before the firing.

James Thompson—sworn.

Q. What did you hear or see passing through Quaker-lane or Green's-lane, on the 5th of March last in the evening? *A.* I came out of the Green-Dragon tavern about nine o'clock, I went up to King-street, through Quaker-lane into Green's-lane, had a person with me hand in hand, I met about fifteen persons walking on different sides of the street, and they had sticks in their hands. Q. What sort of sticks were they? *A.* They seemed to be pretty large sticks, rather too large for walking sticks, just as they passed, I turned about and heard them say, we are rather too soon, I passed on and went on board a vessel at Griffin's wharf, when I came on board, I said to the people, I believed there would be mischief that night, for I had met several people armed with sticks, and what the consequences would be I did not know, for they seemed to be after something; just as I spoke, we heard the bells ring, and some said it could not be the usual bell for nine o'clock, they had heard that ring before, they all went on deck, and hearing a noise and cry of fire, together with the bells, every person went off and left me alone. Q. How many people were on board the vessel? *A.* Four went away; I went aloft to see where the fire was, I heard the engines going along the street and then stop, I heard Mrs. Marston who keeps tavern at the head of the wharf, say, Good God! this is not fire, there will be murder committed this night; a little after I heard a huzzaing and guns go off in King street, I think seven. Q. Did you count them? *A.* Yes, I think there were seven, I remained there till a person came down the wharf, and I asked what was the matter? he told me there were some people killed in King street.

Alexander Cruckshank—sworn.

On the 5th of March, I was in Royal exchange lane, as the clock struck nine I came up the lane, and at the head of the lane hearing some abusive language by two boys, I stopped at *Stone's* tavern, they were abusing the Sentinel; before the box stood about twelve or fourteen lads, I often saw the boys go towards the mob and back to the Sentinel with a fresh repetition of oaths, they said to him, damn you, called him lobster and rascal, wished he was in hell's flames, often and often; I neither heard, or

saw the Sentinel do any thing to them, only said it was his post, and he would maintain it, and if they offered to molest him, he would run them through, upon his saying this, two boys made up some snow balls, and, threw them at the Sentinel. *Q.* Did they hit him? *A.* I cannot say, but on their throwing snow balls, the Sentinel called out guard, guard two or three times. *Q.* Did he call loud? *A.* Yes, very loud, upon that, there were some soldiers came from towards the main guard, seven or eight I believe, they were not of the guard by their having surtout coats on, they came towards the Sentinel, some had bayonets, some swords, others sticks in their hands, on their approach, these people, and the boys who stood before the box, went up to the back of the Town-House by the barber's shop; I then crossed King-street and intended to go in by Pudding lane, and I heard a noise in the Main-street, three or four of these soldiers came down to me, and damned me, and asked who I was, I said, I was going home peaceably, and interfered with neither one side or another, one of them with a bayonet or sword gave me a light stroke over my shoulder, and said, friend you had better go home, for by all I can foresee, there will be the devil to pay or blood shed this night: they turned and went towards the Sentinel at the Custom House. *Q.* Did you know these soldiers? *A.* I did not; I then, instead of going by Pudding-lane, went up by the Guard house, and when I had passed it a little way, I saw the soldiers who went down before the Custom House returning back, with a mob before them, driving them up past the Guard-house. I stepped on pretty quick and endeavoured to get into Mr. Jones' shop the apothecary. *Q.* What number of people were there before the soldiers? *A.* Sixteen or eighteen. Some of them were boys, but the most of them were men from twenty to five-and-twenty years of age I believe; Jones's people shut the door and would not let me in; I went to the side of the Brick meeting and saw two or three boys or lads, pushing at the windows to get in and ring the bell. I went home. *Q.* Did you take the stroke you received from the soldiers to be in anger? *A.* No, it was not in anger, it was very light.

Lt. William Carter—sworn.

On the evening of the 5th of March I heard a bell ring, which I took at first for nine o'clock, but recollecting I had heard the bell ring for nine before, I thought it must be for fire. I asked what the matter was, I was answered, there was a riot in King-street. I saw several men pass, not in a body, but in two's and singly; they walked faster than people generally do on business, I observed that not a man passed but what had either a club, sword, hanger, cutlass, or gun; as I had reason to believe people in a military character were not agreeable, I went in and ordered my servant not to go out. I did not go from my lodgings that night.

Patrick Keaton—sworn.

On the evening of the 5th of March I saw people coming from the North-end, with sticks and clubs in their hands; it was about nine o'clock. I followed them to Dock square, they hallooed King-street; I saw a tall mulatto fellow, the same that was killed, he had two clubs in his hand, he said, here take one of them, I did so. *Q.* What sort of clubs were they? *A.* They were cord wood sticks; I went up to the head of the lane, and I dropt the stick in the snow; he went on cursing and swearing at the soldiers, I had not been long there 'till three or four guns went off, and I went home. *Q.* Did you see anything thrown at the soldiers? *A.* No. *Q.* Did you see anybody strike upon their guns? *A.* No, but I heard the soldiers say keep off, keep off. *Q.* What number of people was there in Dock-square? *A.* About two hundred. *Q.* Did the people appear to be pressing on the party? *A.* Yes, they were as I thought.

William Davis—sworn.

Monday evening the 5th of March, about eight o'clock, I was going towards the North-end in Fore-street, near Wentworth's wharf, I saw about two hundred people in the street before me. I then stept aside, I saw several armed with clubs, and large sticks, and some had guns; they came down in two's and three's a breast; they were a minute in passing me. Q. Were they soldiers that had guns? A. No, I saw no soldier in the street; I heard them saying damn the dogs knock them down, we will knock down the first officer or bloody back'd rascal we shall meet this night; some of them then said they would go to the southward, and join some of their friends there, and attack the damned scoundrels, and drive them out of the town, for they had no business here. Apprehending danger if I should be in my regimentals, I went into a house at the North-end and changed my dress, and in my return from the North-end about nine, coming near Dock-square I heard a great noise a whistling and rattling of wood; I came near the Market place, and saw a great number of people there, knocking against the posts, and tearing up the stalls, saying damn the lobsters, where are they now; I heard several voices, some said let us kill that damned scoundrel of a Sentry, and then attack the main-guard; some said, let us go to Smith's barracks, others said let us go to the rope-walks; they divided:—The largest number went up Royal-exchange lane, and another party up Fitch's alley, and the rest through the main street, up Cornhill. I passed by the Golden-Ball, I saw no person there but a woman, persuading a man to stay at home; he said he would not, he would go amongst them, if he lost his life by it. I went into King-street, looking towards the Custom-house, I saw a number of people seemingly in great commotion; I went towards my barracks, and near the fish stall at Oliver's dock I met a great number of people coming towards King-street, with clubs and large sticks. Q. What time was this? A. It was past nine, for I had heard bells ring before. One of them was loading his piece by Oliver's dock, he said he would do for some of these scoundrels that night. The people were using threats against the soldiers and Commissioners, damn the scoundrels and villains of soldiers and Commissioners, and damn the villain that first sent them to Boston, they shall not be here two nights longer. I went to my barracks; the roll had been called, and there was not a man absent, except some officers that quartered in the town, and their servants. Immediately after I heard as it were a gun fired in King-street, and afterwards two or three more.

Nathaniel Russell—sworn.

On the evening of the 5th March, betwixt nine and ten o'clock, I was at my own house and heard the bells ring, I run out to know where the fire was: I got from Byles' meeting down to the South meeting; I saw a number of men and boys armed with clubs, and fifteen or twenty more coming along, some were damning the soldiers, that they would destroy them, and sink them, and they would have revenge for something or other, I could not tell what, that they would drive them before them: some of the people there said they had been to Rowe's barracks, and had driven the soldiers or the Sentinel into the barracks. I saw a number of people with clubs, and at a distance a parcel of soldiers at the Custom-house; I went down to the right of them, where Capt. Preston stood; I had not been there a minute before the guns were fired, previous to which I saw several things thrown at the soldiers as they stood in a circle by the Custom House. Upon these things being thrown, I intended to retreat as fast as I could; I had not got three yards before the guns were fired,

first one, then another, and so on, I think there were seven in all. Q. Before you turned, did you see any thing strike the guns? A. I did not see, but I heard something strike, and the guns clatter. There was a great noise, the cry was, fire, damn you fire. Q. Was the cry general? A. Yes, it was general. Q. How many people do you imagine were then gathered round the party? A. Fifty or sixty able bodied men. Q. Did they crowd near the soldiers? A. So near, that I think you could not get your hat betwixt them and the bayonets. Q. How many people do you think there might be in the whole? A. About two hundred. Q. Did the soldiers say anything to the people? A. They never opened their lips: they stood in a trembling manner, as if they expected nothing but death. They fired first on the right. I was looking on the whole body, no one between me and the soldiers that interrupted my sight; I saw no blows given, or any of the soldiers fall. Q. Might not their trembling proceed from rage as well as fear? A. It might proceed from both.

John Cox—sworn.

Note. This witness was called on the part of the Crown, to invalidate the testimony of Russell the former witness.

Q. Did you come down from the South-end with Mr. Russell? A. No, I met him at the Town-house. I saw three soldiers, two belonging to the neck, and one to the main guard, by Liberty tree, I was at Mr. Gore's shop opposite the Tree; one said to the other, bring half your guard, and we will bring half ours, and we will blow up this damned pole; I said, so sure as you offer, ye scoundrels, to blow up that pole, you will have your brains blown out. Q. How were these soldiers dressed? A. In their regimentals, one was a drummer. Q. Was he a black man? A. No, he was a white man.

Henry Knox—sworn.

I was at the North-end, and heard the bells ring, and thought it was fire; I came up as usual to go to the fire; I heard it was not fire, but the soldiers and inhabitants were fighting; I came by Cornhill, and there were a number of people an hundred and fifty, or two hundred; I asked them what was the matter, they said a number of soldiers had been out with bayonets and cutlasses, and had attacked and cut the people all down Cornhill, and then retreated to their barracks; a fellow said they had been cutting fore and aft. The people fell gradually down to Dock-square. I came up Cornhill, and went down King-street, the Sentinel at the Custom-House steps was loading his piece; coming up to the people, they said the Sentinel was going to fire. Q. How many persons were there at that time round the Sentinel? A. About fifteen or twenty, he was waving his piece about, and held it in the position that they call charged bayonets. I told him if he fired he must die for it, he said damn them, if they molested him he would fire; the boys were hallooing fire and be damned. Q. How old were these boys? A. Seventeen or eighteen years old. I endeavoured to keep one fellow off from the Sentinel, and either struck him or pushed him away. Q. Did you hear one of the persons say, God damn him, we will knock him down for snapping? A. Yes, I did hear a young fellow, one Usher, about eighteen years of age say this.

John Bulkely—sworn.

Hearing the bells ring I went out, and imagined it had been for fire, but found I was mistaken. I went to Mr. Quincy's office, near the main guard, there was a prodigious noise in King street. I apprehended the Sentinel was in danger, and stood in expectation of seeing the guard

turned out. Capt. Preston was before the office, and appeared in a great flutter of spirit. I knew not he was Captain of the day. A very young officer commanded the guard, I pitied his situation. A person came to Capt. Preston and said they were killing the Sentinel; Capt. Preston said damn you, why do you not turn out; he spoke roughly to them, then some soldiers came out, and he and they went down to the Custom-house. Q. Do you know who it was came up to Capt. Preston? *A.* No. Q. Did you expect they would carry off the Sentinel? *A.* I did not know what would be the consequence, I thought if he came off with his life he would do very well.

Benjamin Lee—sworn.

On the 5th of March there were four of us in a house together, I heard that there was fire; I went to Dock square, when I came there I heard some in the crowd say, that the town's people had been fighting with the soldiers, and then they huzzaed for King-street. Several went up beside me, they went up as thick as they could, and some went up the next lane, and others up Cornhill. As I stood by the Sentinel, there was a barber's boy came up and pointed to the Sentinel, and said there is the son of a bitch that knocked me down; on his saying this, the people immediately cried out, kill him, kill him, knock him down. Q. What number of people was there then? *A.* I cannot tell, I believe there were as many as in this Court, some boys, some men; the Sentinel went up the Custom-House steps and knocked at the door with the butt of his gun, but could not get in; then he primed and loaded, and levelled it with his hip, and desired the people to stand off, and then called to the main guard to come down to his assistance. Q. Did he call loud? *A.* Yes, very loud. Q. What was the expression he used? *A.* Turn out, main guard.—Then Capt. Preston and nine or ten soldiers came down and ranged themselves before the sentry-box. Q. Did you see anything thrown at the Sentinel? *A.* No. Q. Did you hear the people halloo or shout? *A.* They whistled through their fingers and huzzaed.

John Frost—sworn.

Q. Did you meet some boys that evening, who said they had drove some soldiers to their barracks? *A.* In Dock square some people said so, and huzzaed for King street. I went up there, and saw a barber's boy, who said this is the son of a bitch that knocked me down; the people crowded in upon the Sentinel, and he drew back to the Custom-house steps. Q. Did you see anything thrown at the Sentinel? *A.* No, he knocked at the Custom-House door with the butt end of his gun, as I thought to get in, and then I saw him prime and load his piece, and level it with his hip. Q. Were they pressing on him? *A.* Yes they were they said fire, damn you fire, you dare not fire.

William Botsor—sworn.

I was at the Market and went up Royal-exchange lane, I saw no soldier but one, and he was the Sentinel, he got on the steps and loaded, bye and bye I saw a party come down from the main guard, and all that stood round cried fire! fire!—bye and bye they did fire; as soon as I saw a man drop, I went away. I saw snow balls thrown both at the Sentinel and at the party. Q. What number of people were there about the Sentinel? *A.* Near two hundred boys and men.

James Waddel—sworn.

On the 5th March I was in King-street at the Main-Guard, I saw the soldiers going down to the Custom House, I saw the soldiers very much molested by the people of the town throwing snow balls, sticks, and more

rubbish than I can mention, I saw also the Sentinel molested at the Custom-House door: when the party came down, he fell in amongst the rest of the soldiers; I saw a soldier knocked down, but who he was I cannot tell; the firelock flew out of his hand, and he took it up again and fired, and I think he was the first that fired. Q. Did you see any of the prisoners there that night? A. Yes, I saw Hartegan, I was acquainted with him in Halifax, and I kept my eye upon him more than upon any of the rest.

Daniel Cornwall—sworn.

On the evening of the 5th March, when in Milk street, I heard the bells ring, and ran down to the Town House, I saw diverse of the inhabitants there, and inquired the reason of the bells ringing? A young man told me, a rascally soldier had struck one of the inhabitants with a cutlass, I replied where is the damned villain gone? He gave me no answer, presently they turned round and gave two or three cheers. They went to the alley leading to Murray's barracks, some were for going down the alley, some were not, I staid at the head of the alley, presently they went to the bottom of Royal-Exchange lane, and huzzaed and went up the lane, I went up the main street, the bell at this time had stopped; as I got to the Town House, they had got into King street, I went down to see what they would do, there were several gentlemen persuading them to go off, and I believe they would all have gone in a few minutes, had not the soldiers come.—I saw them throwing oyster shells and snow balls at the Sentry at the Custom House door, he was on the steps. Some were hallooing out, let us burn the Sentry box, let us heave it over-board, but they did neither; I stood then opposite the Custom House door, presently I saw a party of soldiers come down, who placed themselves before the Custom House. I observed Capt. Preston standing by the Sentry-box, I saw him talking with a man, I do not know who he was, in the space of two or three minutes, I heard a stick, club, or something else strike a soldier's gun, immediately the gun went off, and then I ran. Just before they fired, I heard the people say, Damn you, fire, you bloody backs.

John Rudduck, Esq.—sworn.

As I went home that evening, I met a number of boys with clubs, they went so for several months before, they choosed to do so, because they had been so often knocked down by the soldiers, some said the soldiers were going to fight with the people. Q. What number did you meet? A. About twenty.

Newtown Prince—sworn.

When the bells rung I was at my own house, I run to the door and heard the cry of fire, I went out, and asked where the fire was; somebody said it was something better than fire. I met some with clubs, some with buckets and bags, and some running before me with sticks in their hands; I went to the Town House, and saw the soldiers come out with their guns and bayonets fixed: I saw Capt. Preston with them; there were a number of people by the west door of the Town House, they said let's go and attack the main guard, some said for God's sake do not meddle with them; they said, by God we will go, others again said, do not go. After a while they huzzaed and went down King street; there was a number of people came down Prison lane, and some from the Post-Office; they went down to the Custom House, and I went down. The soldiers were all placed round in a circle with their guns breast high. I stood on the right wing, when the Captain came the people crowded in to him to speak to him, and I went behind them, there were people all round the soldiers. When I got to the corner I saw people with clubs striking on their guns

at the right wing. I apprehended danger and that the guns might go off accidentally. I went to get to the upper end towards the Town House, I had not got to the centre of the party, before the guns went off; as they went off I run, and did not stop till I got to the upper end of the Town House. *Q.* Did you hear at that time they were striking, the cry of fire, fire? *A.* Yes they said fire, fire, damn you, fire, fire you lobsters, fire, you dare not fire.

Gregory Townsend, Esq.—sworn.

Just after the bell rung nine, hearing the bell ring again, I went out thinking it was fire; I saw numbers of people running from the South end, some had buckets, the principal number had clubs in their hands. I asked where is the fire, I received for answer, at the rope-walks and in King street. Numbers were coming with buckets, and the rest said, Damn your bloods, do not bring buckets, bring clubs. *Q.* Was this before the firing? *A.* Yes.

Andrew (Mr. Oliver Wendell's Negro)—sworn.

On the evening of the 5th of March I was at home, I heard the bells ring, and went to the gate, and saw one of my acquaintances, and we run down to the end of the lane and saw another acquaintance coming up, holding his arm; I asked him what's the matter, he said the soldiers were fighting, had got cutlasses, and were killing everybody, and that one of them had struck him on the arm, and almost cut it off: he told me I had best not go down; I said a good club was better than a cutlass, and he had better go down and see if he could not cut some too. I went to the Town House, saw the Sentinels placed at the main guard standing by Mr. Bowe's corner; numbers of boys on the other side of the way were throwing snow balls at them; the Sentinels were enraged and swearing at the boys; the boys called them lobsters, bloody backs, and hallooed who buys lobsters; one of my acquaintance came and told me that the soldiers had been fighting, and the people had drove them to Murray's barracks; I saw a number of people coming from there who went down by Jackson's corner into King street; presently I heard three cheers given in King street; and went down to the whipping-post and stood by Waldo's shop, and saw a number of people round the Sentinel at the Custom House, there were also a number of people who stood where I did, and were picking up pieces of sea-coal that had been thrown out thereabout, and snow balls, and throwing them over at the Sentinel. While I was standing there, there were two or three boys run out from among the people, and cried, we have got his gun away, and now we will have him; presently I heard three cheers given by the people at the Custom House; I said to my acquaintance I would run up and see whether the guard would turn out. I went and saw a file of men, with an officer with a laced hat on before them; upon that we all went to go towards him, and when we had got about half way to them, the officer said something to them, and they filed off down the street: upon that I went in the shade towards the Guard House, and followed them down as far as Mr. Peck's corner; I saw them pass through the crowd, and plant themselves by the Custom House. As soon as they got there the people gave three cheers. I went to cross over to where the soldiers were, and as soon as I got a glimpse of them, I heard somebody huzza and say here is Old Murray with the riot act, and they began to pelt snow balls; a man set out and run, and I followed him as far as Philips' corner, and then turned back and went through the people until I got to the head of Royal-Exchange lane, right against the soldiers; the first word I heard was a grenadier say to a man by me, Damn you, stand back. *Q.* How near was he to

him? *A.* He was so near that the grenadier might have run him through if he had stept one step forward. While I stopt to look at him, a person came to get through betwixt the grenadier and me, and the soldier had like to have pricked him; he turned about and said, You damn'd lobster, bloody back, are you going to stab me, the soldier said by God I will; presently somebody took hold of me by the shoulder, and told me to go home, or I should be hurt; at the same time there were a number of people towards the Town House, who said, come away and let the guard alone, you have nothing at all to do with them. I turned about and saw the officer standing before the men, and one or two persons engaged in talk with him. A number were jumping on the backs of those that were talking with the officer, to get as near as they could. Upon this I went as close to the officer as I could; one of the persons who was talking with the officer turned about quick to the people, and said, Damn him, he is going to fire; upon that they gave a shout, and cried out, fire and be damn'd, who cares for you, you dare not fire, and began to throw snow balls, and other things, which then flew very thick. *Q.* Did they hit any of them? *A.* Yes, I saw two or three of them hit, one struck a grenadier on the hat, and the people who were right before them had sticks; and as the soldiers were pushing with their guns back and forth, they struck their guns, and one hit a grenadier on the fingers. At this time, the people up at the Town House called again, come away, come away; a stout man who stood near me, and right before the grenadiers, as they pushed with their bayonets the length of their arms, kept striking on their guns. The people seemed to be leaving the soldiers, and to turn from them, when there came down a number from Jackson's corner, huzzaing and crying, Damn them, they dare not fire, we are not afraid of them; one of these people, a stout man with a long cord wood stick, threw himself in, and made a blow at the officer; I saw the officer try to ward off the stroke, whether he struck him or not I do not know: the stout man then turned round, and struck the grenadier's gun at the Captain's right hand, and immediately fell in with his club, and knocked his gun away, and struck him over the head, the blow came either on the soldier's cheek or hat. This stout man held the bayonet with his left hand, and twitched it and cried kill the dogs, knock them over; this was the general cry; the people then crowded in, and upon that the grenadier gave a twitch back and relieved his gun, and he up with it and began to pay away on the people. I was then betwixt the officer and this grenadier, I turned to go off, when I heard the word fire; at the word fire I thought I heard the report of a gun, and upon my hearing the report, I saw the same grenadier swing his gun, and immediately he discharged it. *Q.* Do you know who this stout man was, that fell in and struck the grenadier? *A.* I thought, and still think, it was the mulatto who was shot. *Q.* Do you know the grenadier who was thus assaulted and fired? *A.* I then thought it was Killroy, and I told Mr. Quincy so the next morning after the affair happened, I now think it was he from my best observation, but I can't positively swear it. *Q.* Did the soldiers of that party, or any of them, step or move out of the rank in which they stood to push the people? *A.* No, and if they had they might have killed me and many others with their bayonets. *Q.* Did you, as you passed through the people towards Royal Exchange lane and the party, see a number of people take up any and every thing they could find in the street, and throw them at the soldiers? *A.* Yes, I saw ten or fifteen round me do it. *Q.* Did you yourself pick up every thing you could find and throw at them? *A.* Yes, I did. *Q.* After the gun fired, where

did you go? *A.* I run as fast as I could into the first door I saw open, which I think was Mr. Dehon's, I was very much frightened.

Oliver Wendell, Esq.—sworn.

Q. Is the witness last examined your servant? *A.* Yes. Q. What is his general character for truth? *A.* It is good, I have heard his testimony and believe it to be true, he gave the same relation of this matter to me on the same evening, in a quarter of an hour after the affair happened; and I then asked him whether our people were to blame, he said they were. Q. Pray Sir, is it not usual for Andrew to amplify and embellish a story? *A.* He is a fellow of a lively imagination, and will sometimes amuse the servants in the kitchen, but I never knew him tell a serious lie.

Five o'clock, P. M. the Court adjourned till next morning, Saturday, nine o'clock.

Saturday, nine o'clock, the Court met according to adjournment, and proceeded.

William Whittington—sworn.

I was in King street a quarter after nine o'clock on the 5th of March, and two others with me; in a little time I heard the bells ring, and I made a stop and asked what was the matter? They said fire, I saw several people with buckets, &c. and I asked them where they were going? They said there is fire somewhere. I came up by Pudding lane, and went in betwixt the guard and guard house, for at this time the main guard was turned out, I saw Mr. Basset the officer, and Capt. Preston, while I was standing there, some person in the crowd fronting the soldiers, cried out to the guard, will you stand there and see the Sentinel murdered at the Custom House? Capt. Preston and Mr. Basset were both together, Mr. Basset said to Capt. Preston, what shall I do in this case? Said Preston, take out six or seven of the men, and let them go down to the assistance of the Sentry; I think there were six men ordered out of the ranks, they formed themselves by files, the Corporal marched in the front, and the Captain in the rear; I was at this time on the outside of the soldiers on the left hand, and I kept on the outside from the time they marched from the parade till they came to the Custom House, but how they formed themselves when they came there I did not see, but when I saw them they were formed in a half circle, I was about two or three yards distance from them, I heard Capt. Preston use many intreaties to the populace, begging they would disperse and go home, but what they said I cannot tell; I heard them halloo, fire? fire! you dare not fire, we know you dare not fire: Capt. Preston desired them to go home many times; I departed and saw no more of them.

Joseph Hinkley—sworn.

On the evening of the 5th March I heard the bells ring, I was in Mr. Hall's house, I went out in order to see where the fire was, I heard the drum beat, and went down to the Conduit, I saw thirty or forty people with sticks in their hands Then they hallooed, King street forever, and huzzaed, some went up Royal Exchange lane, I went with a number up Jenkins' alley, I went towards the Sentinel, he was walking backwards and forwards with his firelock on his shoulder; some of the people said, kill him; I had not been there long, before the party came down, and then a good many more people gathered round before the Sentinel-box, some from Quaker lane, some from the Town House, and some from the bottom of King street, some with sticks, some without, they came close to the Sentinel, the bells were ringing, I had not been there long before

they loaded, I was close to them when they loaded. Q. Who gave orders to load? A. I did not hear, there was such huzzaing and whistling, that I could not hear, they had their bayonets about breast high, shoving and pricking with their bayonets to make the way clear, then the people hollowed, fire! why do you not fire, you bloody backs? Q. Did they tell the people to keep off? A. Yes. Q. And did the people go back when desired? A. No, they pressed more upon them, while the people were thus pressing on the party, they fired, I did not hear any orders given. Q. How near did you stand to the soldiers? A. I fell back to the middle of the street when the first gun was fired. Q. How many guns were fired? A. I think six or seven, I did not count them. Q. Did you see the people come close up to the soldiers, and strike on their guns? A. No, they held their sticks up over their heads, flourishing and brandishing them, saying, damn you, fire! you dare not fire. Samuel Gray who was shot that night, clapped me on the shoulder, and said do not run, my lad, they dare not fire, and he ran back and forth among the people and clapped others also on the back as he did me. Q. Had he any thing in his hand? A. I think he had not; I looked to my left soon after the guns were fired, and saw him upon the ground, and with the help of some others, carried him to Dr. Loring's shop, but could not get in, and left him there. Q. Do you know Langford in this town? A. No. Q. Did you see any body go up to Gray, and thrust at him with a bayonet? A. No, I did not see it. Q. How near did he fall to the soldiers? A. He was in the middle of the street. Q. Did you see any of the soldiers move out of the ranks? A. No. Q. How near was you to Gray? A. About three or four yards distance.

Harrison Gray, jun.—sworn.

That evening upon returning home, I saw a number of people round the Sentinel, making use of opprobrious language and threatenings, I desired them to go off, and said the consequence would be fatal if they did not; some few snow balls were thrown, and abusive language continued, they said damn him let him fire, he can fire but one gun. Q. How many were there? A. There might be from seventy to an hundred, I did not particularly observe; when I could not prevail to take them off, I went to Mr. Pain's, in a little while the party came down, I saw nothing afterwards; soon after I heard the guns fired, and Mr. Pain was wounded with one of them. Q. Was you standing at Mr. Pain's door when the guns were fired? A. I was, but was not looking that way, nor did I observe when the party came down; I told the people, the Sentinel was on duty, that was his post, and that he had a right to walk there, and that he could have enough to relieve him, if he stood in need of it, as he was so near the main guard.

Charles Willis—sworn.

I know nothing worthy relating; I was not in King street, I heard there was no fire, but that the soldiers were fighting. I went to Dock square, and saw a number of people there, I came up Royal-exchange lane, and saw the firing, but was not near enough to see any thing the people did.

Matthew Murray—sworn.

That evening I was at home, and heard the bells ring, I went into the street and asked the occasion, I was told it was not fire, but the soldiers fighting with the inhabitants; I went into the house and could find no stick, but I cut the handle of my mother's broom off, with this I came to King street, but there were no soldiers; some people were coming from Royal-exchange lane, some from the Town house, some said, damn it they are only making fools of us, it is best to go home: I went to the

head of Royal-exchange lane, and saw a cluster of people there, and I saw a boy who said that the Sentry had knocked him down with the butt end of his gun; I saw the Sentry on the steps, and the people after he loaded, said, fire! Damn you fire! Presently after the party came down, I stood close to them; they were swinging their bayonets, telling the people to make way, I saw a man talking with Capt. Preston, I went to hear what he said, I could not hear, the grenadier on the right was struck some where on his right side, but I do not know with what, but directly he fired. Q. Was that the right hand man? *A.* Yes. Q. Did you see any snow balls thrown before this? *A.* I think I saw two or three.

Thomas Symmonds—sworn.

Betwixt eight and nine o'clock of the 5th March, I was in my own house near Murray's barracks, the people were running backwards, and forwards, and there was a great mob and riot by the barrack gate; I heard the people as they went along declare, if the soldiers did not come out and fight them, they would set fire to the four corners of the barracks, and burn every damned soul of them. Q. Did you see the people? *A.* I was standiag at my own door, I saw them pass and repass me, but I knew none of them. Q. Was there any disturbance before that? *A.* Yes, there was a disturbance half an hour before that. Q. What sort of a disturbance was it before? *A.* I saw a good number of town's people had cutlasses, clubs, and swords, there was knocking down, riot and disturbance, and this declaration of theirs was after that, and before the bells rung.

William Parker—sworn.

On the evening of the 5th of March, I was at Mr. Coleman's at the north side of the Market, I came from thence through the Market on the south side, I saw seven or eight people, the chief were boys, three or four of them were on the inside the rails, pulling the butcher's stalls to pieces. Q. How old did these boys appear? *A.* About a dozen of years old, or smaller, some about eighteen, I went up to them and observed they were getting sticks; about half a minute after, came along a soldier, I took him to be an officer's servant some said here is a damned soldier, and got foul of the man, I got the soldier away from them, and he went off, I went towards home round by the Golden ball, and up into King street; I met one Mr. James Bayard he and I walked together, we passed the Sentinel I think that was he (pointing to White) it was cold under foot, and we stood upon Stone's steps; in a few minutes there were three or four boys round the Sentinel, they got foul of him; one of them said the Sentinel had struck him with his gun, and they kept pushing one another against him, and pushed him into the box; I said to Mr. Bayard there will be trouble by and bye. About two minutes after there came a parcel of boys and young fellows together, in number about fifteen or sixteen, the chief of them with sticks in their hands. When they got to the head of the lane, there was a little talking and whistling amongst them, and they said let's go up to the Main guard, and they went up by the foot of the Town House; soon after there were five or six boys made their appearance out of Royal-exchange lane, from that I went to go up round Jackson's corner, when I came to the watch-house, I met about twenty people coming round. They were a mixture of men and boys running together; I asked them what had been the matter, they said there had been a squabble by Murray's barracks and they had drove the soldiers in; they said it was all over; then I left Mr. Bayard and they all came down into King street, and betwixt Quaker lane and Royal-exchange lane they made a stop, and met

in a cluster, and not long afterwards dispersed; I did not leave above twelve or fifteen in King street, when I came out of it. I went down Quaker lane, and a number that lived that way went down with me; as I got home I heard some bell ring, and I heard a gun fired and then another, I heard them all fired, I came back as far as the bottom of the lane and no farther. Q. What said the boys in the Market to the soldier who passed by? A. They said here is a damned soldier, some said they are all alike, this is as bad as any of them. I believe they would have beat him if I had not rescued him; he was passing quietly along.

John Gridley—sworn.

On the evening of the 5th of March, I passed my time at the Bunch of Grapes in King street, in company with three gentlemen of the town; betwixt the hours of nine and ten we were alarmed with the bells, and a cry of fire. I met Mr. Davis, he said to me what do you make of this, I told him I believed there was no fire, but rather a tumult. I went up the street into the middle of it, and I stopt just before the Sentinel placed at the Custom house, there were a large number of boys, and some men amongst them, about ten young men, the boys were in the front, and the men in the rear; I believe about twenty-five, boys, men and all. The Sentinel had his gun and bayonet charged, levelled with his hip. I went from thence up to the south end of the Town house opposite to the main guard. Q. Was the Sentinel at that time in the box or on the steps? A. He was retreating towards the steps with his bayonet charged. I then found the main guard to be in confusion. I went up to the head of the Town house, where were a number of gentlemen collected together, I asked them what was the matter, they told me that the soldiers had rushed from Murray's barracks, and had cut several of the inhabitants with their cutlasses; several people were running about the streets, and the cry was damn the rascals. Some said this will never do, the readiest way to get rid of these people is to attack the main guard. Strike at the root, there is the nest. Q. Was this spoken by one or two only? A. No, it was general, they joined in with one another as they met. I went to the north side of the Town House, with a view to return to the place from whence I came; I stopt, and while I was standing, a party of the guard came down from the main guard across King street. I turned round and saw a non-commissioned officer (as I took him to be by his appearance) leading the party, which I at first thought was to relieve the Sentinel at the Custom House as usual, but perceiving this guard was going down to support the Sentinel, I thought it time to go where I came from. I proceeded down street on the Custom House side, on the flat stones; the soldiers were drawn up in two ranks front and rear, as I thought it, they had not had time to form; as I came down I walked betwixt the two ranks, they were then loading their pieces. Passing betwixt the ranks, their guns being on a loading position, I passed leisurely through, and they put their guns and bayonets up to let me go through. I returned to the Bunch of Grapes from whence I came, I saw Mr. Davis and the other gentlemen on the steps, Mr. Davis asked me to give an account of this matter, I told him I could give no account, except a general one, that the soldiers had come out of their barracks, and that they had been a quarreling, and the Sentinel had been interrupted in his duty. Mr. Davis asked me what was that collection of people before the Custom House, who did they consist of? they are nothing, said he, but a parcel of boys; I hastily replied, yes, Mother Tapley's boys. Q. What did you mean by that? A. I meant boys as big as I am. Q. When you passed betwixt the soldiers, was any

thing thrown at them, or did any body strike them? Q. No, not that I saw. When I was at the Bunch of Grapes, I saw some snow balls thrown, some from the rear, some from the middle of the street, and some from Quaker lane, all thrown towards the Custom House. Q. Was there any noise just before the firing? A. As I stood on the steps of the Bunch of Grapes tavern, the general noise and cry was why do you not fire, damn you, you dare not fire, fire and be damned. These words were spoke very loud, they might be heard to the Long wharf. The noise was very great indeed. There was about fifty before the soldiers, and about half the number before the Sentinel, before the party joined him.

Mrs. Catherine Field—sworn.

Q. Did you know Patrick Carr, who was killed by the firing in King street on the 5th of March last? A. Yes. Q. Was he in your house that evening? A. Yes. Q. Did you hear any thing he said, when he was told there was an affray with the soldiers? A. When the bells rung he went up stairs and put his surtout on, and got a hanger and put it betwixt his coat and surtout: my husband coming at that time, gave him a push and felt the sword; he wanted to take it from him, but he was unwilling to let it go, my husband told him he should not take it with him. I do not know what he said, but one of the neighbours was in the house and coaxed the sword out of his hand, and he went out without it. He said on his death bed, he saw a parcel of boys and negroes throwing snow balls at the guard. He thought the first or second man from the Sentinel box was the man that shot him.

John Mansfield—sworn.

Q. Do you know Patrick Carr? A. Yes. On the night of the 5th of March, when the bells rung he would go out; I persuaded him much to stay at home, he did not mind me but took his sword betwixt his coat and surtout. Mr. Field coming in felt it, and said he should not take it out with him; with much coaxing a woman who lived next door got it from him. Q. Did you hear any acknowledgment by him on his death bed? A. I was often at his bed side, and all that I ever heard him say was, he thought he knew the man that shot him, but he never made it known to me.

Dr. John Jeffries—sworn.

Q. Was you Patrick Carr's surgeon? A. I was in company with others. I was called that evening about eleven o'clock to him, I was engaged with Mr. Paine and could not go; next morning I went; after dressing his wounds, I advised him never to go again into quarrels and riots: he said he was very sorry he did go.—Dr. Lloyd who was present, turned round to me and said, Jeffries, I believe this man will be able to tell us how the affair was, we had better ask him. I asked him then how long he had been in King street when they fired? He said he went from Mr. Field's when the bells rung, when he got to Walker's corner, he saw many persons coming from Cornhill, who he was told had been quarreling with the soldiers down there, that he went with them as far as the stocks, that he stopped there, but they passed on: While he was standing there he saw many things thrown at the Sentry. I asked him if he knew what was thrown? He said he heard the things strike against the guns, and they sounded hard, he believed they were oyster shells and ice; he heard the people huzza every time they heard any thing strike that sounded hard: that he then saw some soldiers going down towards the Custom House, that he saw the people pelt them as they went along, after they had got down there, he crossed over towards Warden and Vernon's shop,

in order to see what they would do, that as he was passing he was shot, that he was taken up and carried home to Mr. Field's by some of his friends. I asked him whether he thought the soldiers would fire; he told me he thought the soldiers would have fired long before. I then asked him whether he thought the soldiers were abused a great deal after they went down there; he said he thought they were. I asked him whether he thought the soldiers would have been hurt if they had not fired; he said he really thought they would, for he heard many voices cry out, kill them. I asked him then, meaning to close all, whether he thought they fired in self-defence, or on purpose to destroy the people; he said he really thought they did fire to defend themselves, that he did not blame the man, whoever he was, that shot him. This conversation was on Wednesday. He always gave the same answers to the same questions, every time I visited him. *Q.* Was he apprehensive of his danger? *A.* He was told of it. He told me also, he was a native of Ireland, that he had frequently seen mobs, and soldiers called upon to quell them: whenever he mentioned that, he always called himself a fool, that he might have known better, that he had seen soldiers often fire on the people in Ireland, but had never seen them bear half so much before they fired in his life. *Q.* How long did he live after he received his wound? *A.* Ten days. *Q.* When had you the last conversation with him? *A.* About four o'clock in the afternoon preceding the night on which he died, and he then particularly said, he forgave the man, whoever he was, that shot him, he was satisfied he had no malice, but fired to defend himself. *Q.* Did you yourself see any of the transactions at Murray's barracks that evening? *A.* On the evening of the 5th of March, I was at my father's, opposite Mr. Cooper's meeting; about nine, one of the neighbours run in (a woman) she said to my father, pray sir come out, there will be murder, the soldiers and people are fighting: I went directly towards Murray's barracks, before I got to them I found the passage way stopped up so that I could not pass, by a number of people of all sorts; I saw no soldiers just at that minute, I saw several soldiers towards Mr. Greenleaf's, I think there were three, one of them had a pair of tongs in his hand, another had a stick I think, he was the second, he that had the tongs was the first, behind them were several officers driving the soldiers towards the barrack gate, ordering them to go in, I saw them strike them, they turned them into the gate, they then shut the barrack gate entirely, I think the officers did that themselves; as they were putting them in, there were a great many snow balls thrown at them, they were called cowards, cowardly rascals, and that they were afraid to fight. *Q.* What number of people do you think were there? *A.* There were as many as could stand betwixt the steps and the side of the way; I took the alley to be as full as it could be, for others were pressing to get into that street and could not; I judge not less than seventy or eighty could fill that space of ground: the officers told the people not a soldier should come out, at that time I saw a gentleman speak to some of the officers, who I then took to be Mr. Palmes, I asked the person next me if he knew the names of either of the officers, he pointed to one, and said that was capt. Goldfinch; while the gentleman was talking with Capt. Goldfinch, there was a great deal of abusive language given to them, they were repeatedly called lobsters; they promised the gentleman who was speaking to them, that if any body had been injured, enquiry should be made next day, and the persons should be punished, I heard this repeated four or five different times, they spoke also to the people in general; while they were talking I saw snow balls thrown at the officers, which struck the

door before which they stood; then begged the people would go away; they said they would not; the officers said, they had done all they could, they had turned the soldiers in and shut the gate, that no soldiers should come out that evening; some body replied, you mean they dare not come out, you dare not let them out; many persons cried let us go home, others said no, we shall find some soldiers in King street, a number of them passed up the alley, as they went up they huzzaed and made a noise against the fences and side of the walls; I then passed up the alley myself into Cornhill, as soon as I got out of the alley I heard the Old Brick bell ring. There were many in the street running, some with buckets, enquiring where the fire was; there were many answers given in the street it is not fire, it is the soldiers fighting, I do not know from whom, but from several quarters behind and before me. *Q.* Was there a general cry? *A.* No, the chief were huzzaing. As they went up several of them struck against Jackson's shop-windows and said, damn it, here lives an importer, others ran more towards the Town-house and took up pieces of ice and threw at Jackson's windows and broke four panes of glass, I stood and counted them; at that time Mr. Cazneau came up and said, do not meddle with Mr. Jackson, let him alone, do not break his windows, and they left off throwing; the bigger part of them immediately pushed down King-street by the north side of the Town-house, others of them went betwixt the west door of the Town-house and Cornhill, and said, we will go to the guard; I then went over to the opening betwixt the south side of the Town-house and the Guard-house, to look down to see if they did stop there, at that time I heard a huzza I thought lower down King-street, it was not from any of the people I had then in view, these persons did not stop by the Guard-house, but run directly down King-street; I then turned back, and returned to Cornhill through Boylston's alley, I found a small circle of people talking with the officers on the steps, about twelve; at the time Dr. Cooper's bell began to ring, one of the officers immediately cried out, pray stop that bell, I then left them and went to my father's. I had been but a little while in the house, when the girl ran in from the kitchen, and said there is a gun fired, I replied to the company, I did not believe it, for I had seen the officers put in the soldiers and shut the gate.

Captain Edmund Mason—sworn.

Q. By whom is the Sentry at the Custom-house placed? *A.* The Sentinel at the Custom-house is placed by order of a commanding officer, the commanding officer was then Lt. Col. Dalrymple, by his order a Sentry was placed at the Custom-house to take care of the money in the Cashier's office, books, &c. that is the duty of a Sentinel stationed at the Custom-house. *Q.* Had a Sentry alternately been placed there for some months before the 5th of March? *A.* Yes, for many months before, ever since I came to the town, and the Sentinel there cannot stir till the commanding officer relieves him.

Thomas Hall—sworn.

☞ *Produced on the part of the Crown.*

Q. Do you know any of the prisoners? *A.* Yes, White, Killroy, Wemms and Carrol. *Q.* Did White say any thing to you on the 5th of March last? *A.* Yes—I went down King-street just after the bells began to ring, and he said Hall, I am molested and imposed upon on my post, I cannot keep my post clear; Hall take care of yourself, there will be something done bye and bye. I moved away to the corner of Stone's house and there stood. *Q.* Were any number of people about the Sentinel at that time? *A.* Yes, there were about twenty, he said he could

not keep his post clear. They said he dared not fire. He cocked his gun on the steps, then he presented his gun, and they drew off again.—He desired them to keep off. Some were throwing snow balls, some oyster shells at him. I saw them hit his gun two or three times; then he hallooed for the guard, and the guard came down. As soon as they came down the people pressed in upon them, and they pushed with their bayonets to keep them off, but did not move out of their ranks. Q. Did the soldiers tell them to keep off? A. Yes, but they still pressed on.—Then one man fired, and I run down Royal-exchange lane as fast as I could. Q. How near did you stand to the party? A. About twelve or fourteen feet off.

John Stewart—sworn.

Betwixt eight and nine o'clock, on the 5th of March, as I was going home to Green's lane, I met five or six men with sticks in their hands, about the middle of it I met much the same number, and at the end of it about as many more. Q. Which way were they going? A. They were going into town towards King street.

Capt. Barbason O'Hara—sworn.

Q. Do you know Carrol, one of the prisoners? A. I have known him these four years by a particular circumstance: I landed at a battery where he was on duty, and entered into conversation with him; and I have taken particular notice of him ever since. Q. What is his general character? A. That of a discreet sober orderly man. Q. Do you know if a Sentinel was constantly placed at the Custom House? A. Yes, for several months before last March, by order from the commanding officer.

Theodore Bliss—sworn.

On the evening of the 5th of March I was in my own house, betwixt nine and ten I heard the bells ring for fire, I went out of the house and came into King street; I there saw the soldiers and the officer. I went to the officer and asked him if his men were loaded, he said they were; I asked him if they were loaded with ball, he made me no answer; I asked if they were going to fire, he said they could not fire without his orders; directly I saw a snow ball and stick come from behind me which struck the grenadier on the right, which I took to be Warren, he warded it off with his musket as well as he could, and immediately he fired. He was the first man on the right, and the third man from the officer; immediately after the first gun, the officer turned to the right and I turned to the left and went down the lane; I heard the word fire given, but whether it was the town's people or the officer, I do not know. Q. Did you, or did you not, after the first gun was fired, see a blow aimed? A. I did not. Q. Did you not aim a blow yourself? A. Yes, when I was going away. Q. How large was that stick you saw thrown? A. About an inch diameter. Q. Did the soldier sally or step back when the stick struck him? A. I saw only his body, I did not see his feet. Q. Directly on the first gun's going off, did any close in upon the soldiers and aim a blow or blows at them? A. I did myself, whether any one else did or not I cannot tell. When I was about three or four rods from my own house, I heard the soldiers were quarrelling with the inhabitants, some inhabitants said, we had better go and see it out. Q. What number was coming down along with you? A. Six or eight, in some places eight or ten, in others one after another, all the way along from the South end; the people were saying the soldiers were quarrelling with the inhabitants—breeding a rumpus—going to beat the inhabitants. Some said, we had better go home—others, let us go now and see it out—it is

the best time now—and now is the only time. Q. Had they buckets? A. Yes. Q. Had all of them buckets? A. No. Q. What had the rest? A. Some had nothing at all, some had walking canes. Q. Are you sure it was the man nighest to the Custom House that fired first, and that the stick struck! A. Yes, I think I am certain of it.

Henry Bass—sworn.

☞ *Produced on the part of the Crown.*

On the evening of the 5th of March I left my house in Winter street, and went to see a friend in the neighbourhood of Dr. Cooper's meeting, I went down the main street, and coming near Boylston's alley, I saw a number of boys and children from twelve to fifteen years old, betwixt Mr. Jackson's and the alley; some of them had walking canes. A number of soldiers, I think four, sallied out of the alley. Q. How many boys were there? A. Six or eight. Q. What time of night was it? A. About five minutes after nine. I took the soldiers for grenadiers, all of them had cutlasses drawn. Q. Did they come out of the barracks? A. They came out of the alley, and I imagine from the barracks; they fell on these boys, and every body else that came in their way, they struck them; they followed me and almost overtook me, I had the advantage of them and run as far as Col. Jackson's, there I made a stand. Q. Did you see that their cutlasses were drawn? A. Yes, it was a very bright night, these lads came down, some of them came to the Market square, one got a stave, others pieces of pine, they were very small, I do not know whether any of the lads were cut.—I turned and then saw an oyster-man, who said to me, damn it here is what I have got by going up; (showing his shoulder wounded) I put my finger into the wound and blooded it very much.—This oyster-man made a stand, and several people got round him, asking him questions. Q. What time was this? A. A few minutes after nine. Q. Was it before the bells rung as for fire or after? A. It was some time before. My way lay through that alley where the barracks were, but I did not think it safe to go up that way, I returned home by the way of Royal-Exchange lane. Q. When you got to Dock square, were there a number of people there? A. This affair of the oyster-man gathered numbers, before that there were not above eight, all little lads, in a little time I imagine about twenty gathered. I passed up Royal-Exchange lane by the Sentinel, quite near him, I suppose there were not above fifteen persons in King street, very few for such a pleasant night; it was then about fifteen minutes after nine. Q. Where was the Sentinel? A. Close to the corner of the Custom House, I came quite near him. I went up from Royal-Exchange lane to the north side of the Town House, and when I came there the Old Brick meeting house bell began to ring. Q. Did this gather a great many? A. Yes. I proceeded towards home, I met several of my acquaintance and told them there was no fire, but there had been a quarrel with the soldiers and inhabitants, but that it was all over, in particular I met Mr. Chase, presently after Dr. Cooper's bell rung. I had got to Winter street when I heard the guns fire. Q. Did you know previous to the Old Brick bell's ringing, that it was to ring to alarm the inhabitants? A. I did not, but after it had rung I knew it.

Edward Payne—sworn.

☞ *Produced on the part of the Crown.*

On Monday evening the 5th of March I went to Mr. Amory's, while I was there the bell rung, which I supposed was for nine o'clock, I looked at the clock, it was twenty minutes after nine; I was going out to enquire where the fire was, Mr. Taylor came in, he said there was no fire, but he un-

derstood the soldiers were coming up to cut down Liberty-tree! I then went out to make inquiry, before I had got into King street, I met Mr. Walker the ship carpenter, I asked him what the matter was; he said the soldiers had sallied out from Smith's barracks, and had fell on the inhabitants, and had cut and wounded a number of them, but that they were drove into the barracks: I then went to my house to inform Mrs. Payne that it was not fire, apprehending she might be frightened; I immediately went out again, there was nobody in the street at all; the Sentry at the Custom House was walking as usual, nobody near him; I went up towards the Town house, where were a number of people, I inquired of them what the matter was? They gave me the same account Mr. Walker did. While I stood there, I heard a noise in Cornhill, and presently I heard a noise of some people coming up Silsby's alley, at first I imagined it was soldiers and had some thoughts of retiring up the Town house steps, but soon found they were inhabitants, I stood till they came up to me, I believe there might be twenty at the extent, some of the persons had sticks, some had not, I believe there were as many with sticks as without, they made a considerable noise, and cried, Where are they!—where are they! At this time there came up a barber's boy and said the Sentry at the Custom house had knocked down a boy belonging to their shop; the people then turned about and went down to the Sentry; I then was left as it were alone; I proceeded towards my own house, I met Mr. Spear the cooper, he said, do not go away, I am afraid the main guard will come down; I told him I was more afraid of those people that had surrounded the Sentry, and desired him if he had any influence over them to endeavour to take them off; and when directly opposite to the Custom house I saw a number of persons going up the steps and heard a violent knocking at the door, the Sentry stood by the box as I took it, I stopt to see if they opened the Custom House door to let them in, I found they did not open the door; I then retired to my own house, and stood at the door. *Q.* Was there a noise by the Sentry? *A.* Yes, a confused noise, I remained at my door, and Mr. Harrison Gray came up and stood there talking with me; the people were crying out fire! fire! damn you, why do you not fire? Mr. Gray and I were talking of the folly of the people in calling the Sentry to fire on them; in about a minute after, I saw a number of soldiers come down from the main guard, and it appeared to me they had their muskets in a horizontal posture, they went towards the Custom House, and shoved the people from the house, I did not see in what manner they drew up; at this time Mr. Bethune joined us, and the noise in the street continued much the same as before, fire! fire! why do you not fire? Soon after this, I thought I heard a gun snap, I said there is a gun snapped, did you not hear it? Immediately a gun went off, I reached to see whether it was loaded with powder, or any body lying dead, I heard three more, then there was a pause, and I heard the iron rammers go into their guns, and then three more were discharged, one after another; it appeared to me there were seven in all, as soon as the last gun was discharged I perceived I was wounded, and went into the house. I did not feel the wound before the last gun went off. I was not near enough to see whether the people struck or threw any thing at the soldiers. *Q.* How many people were about them? *A.* From fifty to an hundred.

Five o'clock, P. M. the Court adjourned till Monday morning, nine o'clock.

Monday, nine o'clock, the Court met according to adjournment, and proceeded.

Mr. JOSIAH QUINCY, JUN.

May it please your Honors, and you Gentlemen of the Jury,

WE have at length gone through the evidence in behalf of the prisoners. The witnesses have now placed before you, that *state of facts*, from which results our defence. The examination has been so lengthy, that I am afraid some painful sensations arise, when you find that you are now to sit and hear the remarks of counsel. But you should reflect, that no more indulgence is shown to the prisoners now on trial, than has ever been shown in all capital causes; the trial of one man has often taken up several days; when you consider, therefore, that there are eight lives in issue, the importance of the trial will show the necessity of its length.—To each of the prisoners different evidence applies, and each of them draw their defence from different quarters.

I stated to you, gentlemen, your duty, in opening this cause—do not forget the discharge of it. You are paying a debt you owe the community for your own protection and safety: by the same mode of trial are your own rights to receive a determination; and in your turn, a time may come when you will expect and claim a similar return from some other jury of your fellow subjects.

In opening, I pointed out the dangers to which you were exposed; I trust your own recollection will now preclude a recapitulation of them.—The reasons of what I then said, I trust have in some measure appeared: the propriety of some of those observations has been corroborated by succeeding evidence; and you must have traced yourselves, some of those consequences, turning out in evidence, which have had an intimate relation, if not their origin, with some or all of those opinions, notions, sentiments or passions (call them what you will) which I took occasion to observe, as clues, aids, and leading-strings, in our intended examination and decision.

How much need was there for my desire, that you should suspend your judgment till the witnesses were all examined! How different is the complexion of the cause! Will not all this serve to show every honest man, the little truth to be attained in partial hearings? We have often seen communities complain of *ex-parte* testimonies: individuals, as well as societies of men, are equally susceptible of injuries of this kind: this trial ought to have another effect, it should serve to convince us all, of the impropriety, nay injustice, of giving a latitude in conversation upon topics, likely to come under a judicial decision; the criminality of this conduct is certainly enhanced, when such loose sallies and discourses are so prevalent as to be likely to touch the life of a citizen. Moreover there is so little certainty to be obtained by such kind of methods, I wonder we so often find them practised. In the present case, how great was the prepossession against us! And I appeal to you, gentlemen, what cause there now is to alter our sentiments. Will any sober, prudent man countenance the proceedings of the people in King-street? Can any one justify their conduct? Is there any one man, or any body of men, who are interested to espouse and support their conduct? Surely no. But *our* inquiry must be confined to the *legality* of their conduct: and here can be no difficulty. It was certainly illegal, unless many witnesses are directly perjured: witnesses, who have no apparent interest to falsify—witnesses, who have given their testimony with candor and accuracy—witnesses,

whose credibility stands untouched—whose credibility the counsel for the king do not pretend to impeach, or hint a suggestion to their disadvantage.

I say, gentlemen, by the standard of the law are *we* to judge the actions of the people who were the assailants, and those who were the assailed, and then on duty. And here, gentlemen, the rule, we formerly laid down, takes place. To the *facts*, gentlemen, apply yourselves. Consider them as testified: weigh the credibility of the witnesses—balance their testimony—compare the several parts of it—see the amount of it:—and then according to your oaths—"Make *true* deliverance according to your evidence." That is, gentlemen, having settled the facts, bring them truly to the standard of the law; the king's judges who are acquainted with it, who are presumed best to know it, will then inspect this great standard of right and wrong, truth and justice; and they are to determine the degree of guilt to which *the fact* rises.

But before we come to those divisions of inquiry, under which I intend to consider the evidence, let me once more carefully distinguish between the transactions in Cornhill and those by the Custom House.

The conduct of the soldiers in Cornhill may well be supposed to have exasperated the minds of all who beheld their behaviour. Their actions accumulated guilt, as it flew; at least, we may well suppose, the incensed people who related them, added new colours to the scene. The flame of resentment imperceptibly enkindles, and a common acquaintance with human nature will shew, that it is no extravagant supposition, to imagine many a moderate man might at such a season, with such sentiments, which I have more than once noticed, hearing such relations and complaints; I say do I injure any one, in supposing, that under all these circumstances, a very moderate person, who in ordinary matters acted with singular discretion, should now be drawn imperceptibly away, or rather transported into measures, which in a future moment he would condemn and lament. What more natural supposition, than to suppose many an honest mind might at this time fluctuate thus.—The soldiers are here—we wish them away: we did not send for them—they have cut and wounded the peaceable inhabitants, and it may be my turn next. At this instant of time, he has a fresh detail of injuries—resentment redoubles every successive moment—huzza! for the main guard; we are in a moment before the Custom House. No time is given for recollection. We find, from the king's evidence, and from our own, the cry was "Here is a soldier!" Not here is *the soldier* who has injured us—here is the fellow who wounded the man in Cornhill. No, the reasoning or rather ferment seems to be, the soldiers have committed an outrage, we have an equal right to inflict punishment, or rather revenge, which they had to make an assault. They said right, but never considered, that *those* soldiers had *no right* at all. These are sentiments natural enough to persons in this state of mind—we can easily suppose even good men thinking and acting thus. Very similar to this is the force of Dr. Hiron's testimony, and some others. But our inquiry is, what says the law? We must calmly inquire, whether this, or any thing like it, is countenanced by the law. What is *natural* to *the man*, what are his feelings, are one thing: what is the *duty* of the *citizen*, is quite another. Reason must resume her seat, and then we shall hear and obey the voice of the law.

The law indulges no man in being his own avenger. Early, in the history of jurisprudence, we find the sword taken from the party injured, and put into the hands of the magistrate. Were not this the case, punishment would know no bounds in extent or duration. Besides, it saps the

very root of distributive justice, when any individual invades the prerogative of law, and snatches from the civil magistrate the balance and the rod. How much more are the pillars of security shaken, when a mixt body, assembled as those in King-street, assume the province of justice, and invade the rights of the citizen? For it must not be forgotten, that the soldier is a citizen, equally intitled with us all to protection and security. Hence all are alike obliged to pay obedience to the law: for the price of this protection is that of obedience.

Let it not be apprehended, that I am advancing a doctrine, that a soldier may attack an inhabitant, and he not allowed to defend himself. No, gentlemen! if a soldier rush violently through the street and presents a weapon of death in a striking posture, no doubt the person assailed may defend himself, even to taking the life of the assailant. Revenge and a sense of self-preservation instantly take possession of the person thus attacked; and the law goes not upon the absurd supposition, that a person can in these circumstances unman himself. Hence we find a husband, taking his wife in the act of adultery, instantly seizes a deadly weapon and slays the adulterer, it is not murder. Nay a fillip upon the nose or forehead, in anger, is supposed by the law to be sufficient provocation to reduce killing to manslaughter. It is, therefore, upon principles like these, principles, upon which those, who now bear the hardest against us, at other times, so much depend; it is, I say, upon the right of self-defence and self-preservation we rely for our acquittal.

Here again it should be kept in view, that whenever the party injuring has escaped by flight, and time sufficient for the passions to cool, in judgment of law, hath elapsed, however great the injury, the injured party must have recourse to law for his redress. Such is the wisdom of the law; of that law, than which we are none of us to presume ourselves wiser;—of that law, which is founded in the experience of ages, and which in condescension to the infirmities of flesh and blood (but to nothing else) extenuates the offence, For "no man," says the learned Judge Foster, "*under the protection of the law* is to be the *avenger* of his own wrongs. If they are of such a nature for which the laws of society will give him an adequate remedy, *thither* he ought to resort. But be they *of what nature soever*, he *ought* to bear his lot *with patience*, and remember, *that vengeance belongeth to the Most High.*"——Crown Law, 296.

Now, gentlemen, those, whoever they were, who committed the outrage in Cornhill, *had absconded*—the soldiers, who are supposed to have done them, were confined in their barracks. People were repeatedly told this, and assured by the military officers, that they should not go unpunished. But what followed? Are all present appeased? We are constrained, by the force of the evidence, to affirm they were not. But to get regular and right ideas, we must consider all the commotions of the season, and endeavour to come at truth by analyzing the evidence, and arranging it under distinct heads of enquiry.

[☞ Mr. Quincy now entered, at large, upon a review of the appearances in several parts of the town: he was copious upon the expressions and behaviour sworn to.

He, then, more particularly recapitulated the evidence touching Murray's Barracks, Dock square, and the Market place.

He next pursued several parties, through the several lanes and streets, till they centered at the scene of action.

The testimonies of the witnesses, who swore to the repeated information given the people;—that the Sentry and party were on duty;—that

they were desired to withdraw and warned of the consequences ;—were in their order considered.

Under the next three heads, was remarked " the temper of the *Sentry*, of the *party of soldiers*, and of the *people surrounding them*."

The *words*, *insult* and *gestures* of the same persons were next pointed out : and from thence was collected the designs of the persons *assaulting*, and the reasonable apprehensions of those *assaulted*.

Mr. Quincy then came to the *attack* itself ;—considering who the persons were (namely *some* sailors ;) remarking minutely the words and actions immediately preceeding the onset; the weapons used ; the violence of the assault and battery ; and the danger of the soldiers.

Mr. Quincy next exhibited those parts of the testimonies, which evidenced the attack continued *after the firing*.

Under all these heads, there was methodically stated the number of the witnesses to each point, and by a comparative view of all the proofs, conclusions drawn as to the force of the whole.

The next consideration, in this mode of inquiry, was the evidence as severally pertaining to each prisoner ; with such observations, on the one hand, as served to shew a defect of legal proof as to fact ; on the other, such matter as served to justify, excuse or extenuate the offence, in law.

And particularly with regard to Killroy, Mr. Quincy cited and commented on the following passages from Judge Foster's crown law, and the Marquis of Beccaria's Essay on Crimes and punishments.

" *Words* are often misrepresented, whether through ignorance, inattention, or malice, it mattereth not the defendant, he is equally effected in either case ; and they are equally liable to misconstruction. And withal, this evidence is not in the ordinary course of things to be disproved by that sort of negative evidence by which the proof of plain facts may be and often is confronted." Crown. Law, 243.

" Finally, the *Credibility* of a witnesses is *null*, when the question relates to the *words* of a *criminal* ; for the tone of voice, the gesture, all that precedes, accompanies and follows the different ideas which men annex to the same words, may so alter and modify a man's discourse, that it is almost impossible to repeat them precisely in the manner in which they were spoken. Besides, violent and uncommon actions, such as real crimes, leave a trace in the multitude of circumstances that attend them, and in their effects ; but *words* remain only in the memory of the hearers, who are commonly negligent or prejudiced. It is infinitely easier then to sound an accusation on the *words*, than on the *actions* of a man ; for in these, the number of circumstances, urged, against the accused, afford him variety of means of *justification*." Essay 48, 9.]

May it please your Honors, and you, gentlemen of the Jury,

After having thus gone through the evidence, and considered it as applicatory to *all* and *every* of the prisoners, the next matter in order seems to be the consideration of the law pertinent upon this evidence.

And here, Gentlemen, let me again inform you, that the law which is to pass upon these prisoners, is a law adapting itself to the human species, with all their feelings, passions and infirmities ; a law which does not go upon the absurd supposition, that men are stocks and stones ; or that in the fervour of the blood, a man can act with the deliberation and judgment of a philosopher. No Gentlemen :—the law supposes that a principle of resentment, for wise and obvious reasons, is deeply implanted in the human heart ; and not to be eradicated by the efforts of state policy. It, therefore, in some degree conforms itself to all the workings of the pas-

sions, to which it pays a great indulgence, so far as not to be wholly incompatible, with the wisdom, good order and the very being of government.

Keeping therefore this full in view, let us take once more, a very brief and cursory survey of matters supported by the evidence. And, here, let me ask sober reason—What language more approbrious—What actions more exasperating, than those used on this occasion? Words, I am sensible are no *justification* of blows, but they serve as the grand clues to discover the temper and the designs of the agents: they serve also to give us light in discerning the apprehensions and thoughts of those who are the objects of abuse.

"You lobster," "You bloody-back," "You coward" and "You dastard," are but some of the expressions proved.—What words more galling? What more cutting and provoking to a soldier? To be reminded of the colour of his garb, by which he was distinguished from the rest of his fellow citizens; to be compared to the most despicable animal, that crawls upon the earth, was touching indeed a tender point. To be stigmatized with, having smarted under the lash, at the halbert, to be twitted with so infamous an ignominy; which was either wholly undeserved, or a grievance which should never have been repeated:—I say to call up and awaken sensations of this kind, must sting even to madness. But accouple these words with the succeeding actions,—"You dastard,"—"You coward!"—A soldier and a coward! This was touching, (with a witness) "*The point of honor*, and the pride of virtue."—But while these are as yet fomenting the passions, and swelling the bosom, the attack is made: and probably the latter words were reiterated at the onset; at least, were yet sounding in the ear. Gentlemen of the jury, for heaven's sake, let us put ourselves in the same situation! Would you not spurn at that spiritless institution of society, which tells you to be a *subject* at the expense of your *manhood*?

But does the soldier step out of his ranks to seek his revenge? Not a witness pretends it: Did the people repeatedly come within the points of their bayonets, and strike on the muzzles of the guns?—You have heard the witnesses.

Does the law allow one member of the community to behave in this manner towards his fellow citizen, and then bid the injured party be calm and moderate? The expressions from one party were—"Stand off—stand off"! "I am upon my station"—"if they molest me *upon my post*, I will fire."—"By God I will fire!"—"Keep off!" These were words likely to produce reflexion and procure peace. But had the words on the other hand a similar tendency?—Consider the temper prevalent among all parties at this time. Consider the then situation of the soldiery; and come to the heat and pressure of the action. The materials are laid, the spark is raised, the fire enkindles, the flame rages, the understanding is in wild disorder, all prudence and true wisdom are utterly consumed. Does common sense, does the law expect impossibilities? *Here*, to expect equanimity of temper, would be as irrational, as to expect discretion in a mad man. But was any thing done on the part of the assailants, similar to the conduct, warnings and declarations of the prisoners? Answer for yourselves, Gentlemen. The words reiterated, all around, stabbed to the heart, the actions of the assailants tended to a worse end: To awaken every passion of which the human breast is susceptible. Fear, anger, pride, resentment, revenge, alternately, take possession of the whole man. To expect, under these circumstances, that such words would assuage the tempest, that such actions would allay the flames—You might, as rationally, expect the inundations of a torrent would suppress a deluge, or rather, that the flames of Etna would extinguish a conflagration!

Prepare, Gentlemen of the Jury, now to attend to that species of law, which will adapt itself to this trial, with all its singular and aggravating circumstances. A law full of benignity, full of compassion, replete with mercy.

And here, Gentlemen, I must, agreeable to the method we formerly adopted, first tell you by what law the prisoners are *not* to be tried, or condemned. And they most certainly are *not* to be tried by the *Mosaic* law: a law, we take it, peculiarly designed for the government of a peculiar nation, who being in a great measure under a theocratical form of government, its institutions cannot, with any propriety, be adduced for our regulation in these days. It is with pain, therefore, I have observed any endeavour to mislead our judgment on this occasion; by drawing our attention to the precepts delivered in the days of *Moses*; and by disconnected passages of Scriptures, applied in a manner foreign to their original design or import, there seems to have been an attempt to touch some peculiar sentiments, which we know are thought to be prevalent; and in this way, we take it, an injury is like to be done, by giving the mind a bias, it ought never to have received; because it is not warranted by our laws.

We have heard it publickly said of late, oftener than formerly, "Whosoever sheddeth man's blood, by man shall his blood be shed." This is plainly, gentlemen, a general rule, which, like all others of the kind must have its exception. A rule, which if taken in its strict literal latitude, would imply, that a man killing another in self-defence, would incur the pains of death. A doctrine, which no man in his senses would ever embrace: a doctrine that certainly never prevailed under the *Mosaical* institution. For we find, the *Jews* had their six cities of refuge, to which the manslayer might flee, from the avenger of blood. And something analogous to this, (if it did not originate from it) is our benefit of clergy.

And so, that, "the *murderer* shall flee to the pit" comes under the same consideration. And when we hear it asked, as it very lately has been, "Who DARE stay him?" I answer, if the laws of our country stay him, you ought to do likewise; and every good subject *dares* to do what the law allows. But the very position is *begging the question*; for the question, now in issue, is, whether either of the prisoners is *a murderer*, in the sense of our laws; for you recollect, that what is murder and what not, is *a question of law*, arising upon facts stated and allowed.

But go on; "You shall take no satisfaction for the life of a *murderer*, which is *guilty of death*." Here again, is a begging the question; and moreover the words "*guilty of death*," if rightly rendered from the original, must be one of those general rules, I just now mentioned; which always have their exceptions. But those words seem to be wrong translated: for in the margin of our great bible, we find them rendered "*faulty to die*." Against a position of this kind we have no objection. If we have committed *a fault*, on which *our laws* inflict the punishment of *death*, we must suffer. But what fault we have committed you are to inquire: or rather you, gentlemen, are to find that the *facts proved in Court against us*, and the Judges are to see and consider what the law pronounces touching our offence, and what punishment is thereby inflicted as a penalty.

In order to come at the whole law resulting from the facts which have been proved, we must inquire into the LEGALITY of the *assemblies*. For such is the wisdom and policy of the law, that if any assembly be *lawful*, each individual of that assembly is answerable *only for his own act*, and *not*

for any other. On the contrary, if an assembly be *unlawful, the act of any one* of the company, to the particular purpose of assembling, *is chargeable on all.* This is law, which no lawyer will dispute; it is a law founded in the security of the peace of society, and however little considered, by people in general, it ought now steadily to be kept in mind.

Was the assembly of the soldiers lawful?—For what did the soldiers assemble?—Was the Sentinel insulted and attacked?—Did he call for assistance, and did the party go to assist him?—Was it lawful for them so to do?—Was the soldiers when thus lawfully assembled, assaulted, &c. by a great number of people assembled, &c.—Was this last assembly lawful?—Was any thing done by this unlawful assembly, that will, in law, justify, excuse, or extenuate the offence of killing, so as to reduce it to manslaughter?—Was the killing justifiable, or rather was it justifiable self-defence? was it excusable, or rather was it self-defence, culpable, but, through the benignity of the law, excusable? or was it felonious? if felonious, was it with or without malice?

☞ Under each of these heads of inquiry, in their order, Mr. Josiah Quincy arranged his arguments; and as he separated and compared, and settled the facts, he applied his law, with explanatory comments. In the course of which he necessarily run over again facts, that had been before noticed, which occasions our omission of this part of his defence. But for the sake of those, who would choose to inspect, at their leisure, the authorities, they are here subjoined in the order, in which they were cited.

Hawkins, vol. ii. p. 29, 9, ibid. Mutiny Act, p. 115, 116, 117, 118, sec. 78, 8. Blackstone's Com. vol. i. p. 147, 262, 335, 336. Blackstone, vol. iv. p. 194, 195. 3d Institute, p. 51, 57. Blackstone, vol. iv. p. 191, 192. Foster's Crown Law, p. 276, 277, 278, 262, 257. Blackstone, vol. iv. p. 200, top ——Blackstone, vol. iv. p. 180, 280. Foster's Crown Law, p. 298. 3d Institute, 56, top. Hawkins, vol. i. 75. Ibid, 71, bot. Ibid, 72, top. Foster's Crown Law, 273, 274. Keyl. 128, 129, 51.——Foster's Crown Law, 278, 277, 276, 295.——Blackstone, vol. iv. p. 191. Foster's Crown Law, p. 277. Blackstone, vol. iv. p. 192. Foster's Crown Law, p. 298, 296, 292. 3d Institute, p. 55, bot. Hawkins, vol. i. p. 82, bot. 84, mid. Hawkins' Pleas of the Crown, vol. i. p. 484. Hawkins, vol. i. 85, mid. Cro. Car. p. 537, Cook's case. Hale, vol. ii. p. 274. Blackstone, vol iv. p. 183. Hawkins, vol. i. p. 82, bot. Keyl. p. 135, bot.——Foster, p. 261, 262. Blackstone, vol. iv. p. 27. Hawkins, vol. i p. 84, sec. 44. Foster, p. 350 § 5. Hawkins, vol. i. Chap. 31, § 21——cites Bulstrode, p. 86, 87—Keyl. p. 51—Lord Bacon's Elem, 25.

The law laid down, in Foster, 261, 2. before cited, being indisputable law, not denied or controverted; and being very material in the trial, and much relied on by the prisoners, is here set down at large.

"I will mention a case, (says the learned Judge,) which through the ignorance or lenity of juries hath been sometimes brought within the rule of accidental death. It is where a blow aimed at *one* person lighteth upon *another* and killeth him. This, in a loose way of speaking, may be called accidental *with regard to the person who dieth by a blow not intended against* HIM. But the law considereth this case in a quite different light. If from circumstances it appeareth that the injury intended to A. be it by poison, blow, or *any other means of death*, would have amounted to murder supposing *him* to have been killed by it, it will amount to the same offence if B. happeneth to fall by the same means. Our books say, that in this case the malice *egreditur personam*. But to speak more intelligibly, where

the injury intended against A proceeded from a wicked, murderous, or mischievous motive, the party is answerable for all the consequences of the action, if death ensues from it, though it had not its effect upon the person whom he intended to destroy. The *malitia* I have already explained, the heart regardless of social duty DELIBERATELY bent upon mischief, consequently the guilt of the party is just the same in the one case as the other. *On the other hand,* if the blow intended against A and lighting on B *arose from a sudden transport of passion* which in case A had died by it, *would have been reduced to manslaughter,* the fact will admit of the SAME ALLEVIATION if B should happen to fall by it." To the same effect are other authorities.

May it please your Honors, and you, Gentlemen of the Jury.

I have now gone through those authorities in law, which I thought pertinent to this trial. I have been thus lengthy, not for the information of the Court, but to satisfy you, gentlemen, and all who may chance to hear me, of that law, which is well known to those of us, who are conversant in courts, but not so generally known, or attended to, by many, as *it ought to be.* A law which extends to each of us, as well as to any of the prisoners; for it knows *no distinction of persons.*

And the doctrines which have been thus laid down are for the safeguard of us all. Doctrines which are founded in the wisdom and policy of ages; which the greatest men, whoever lived, have adopted and contended for. Nay, the matter has been carried, by very wise men, much further than we have contested for. And that you may not think the purport of the authorities read, are the rigid notions of a dry system, and the contracted decisions of municipal law, I beg leave to read to you a passage from a very great, theoretic writer: a man whose praises have resounded through all the known world, and probably will, through all ages, whose sentiments are as free as air, and who has done as much for learning, liberty and mankind, as any of the sons of Adam; I mean the sagacious Mr. Locke: He will tell you, gentlemen, in his Essay on Government, p. 2. c. iii. "That *all manner of force without right* puts man in a state of *war* with the *aggressor;* and of consequence, that, being in such a state of *war,* he may LAWFULLY KILL him, who put him under this *unnatural* restraint." According to this doctrine, we should have nothing to do, but inquire, whether here was "*force without right:*" if so, we were *in such a state,* as rendered it LAWFUL TO KILL the aggressor, who "put us under so *unnatural a restraint.*" Few, I believe, will say, after hearing *all* this evidence, that we were under no *unnatural restraint* But we do not wish to extend matters so far. We cite this author to show the world, that the greatest friends to their country, to universal liberty, and the immutable rights of all men, have held tenets, and advanced maxims favourable to the prisoners at the bar. And although we should not adopt the sentiments of Mr. Locke in their most extensive latitude, yet there seems to be something very analogous to this opinion, which is countenanced in our laws.

There is a spirit which prevades the whole system of English jurisprudence, which inspires a freedom of thought, speech and behaviour. Under a form of government like ours, it would be in vain to expect, that pacific, timid, obsequious, and servile temper, so predominant in more despotic governments. From our happy constitution there results its very natural effects—an impatience of injuries, and a strong resentment of insults: (and a very wise man has said, "He who *tamely* beareth insults *inviteth* injuries.") Hence, I take it, that attention to the "feelings of humanity"—to "humanity and imperfection"—"the infirmities of flesh and blood;" that attention to "the indelible rights of mankind;"—that

lenity to "the passions of man;"—that "benignity and condescension of the law" so often repeated in our books. And, indeed, if this were not the case, the genius of our civil constitution and the spirit of our municipal law would be repugnant:—that prime defect in any political system—that grand solecism in state-policy.

Gentlemen of the Jury,

This cause has taken up much of your time, and is likely to take up so much more, that I must hasten to a close: indeed I should not have troubled you, by being thus lengthy, but from a sense of duty to the prisoners; they, who, in some sense, may be said to have put their lives in my hands; they whose situation was so peculiar, that we have necessarily taken up more time, than ordinary cases require: they, under all these circumstances, placed a confidence, it was my duty not to disappoint; and which I have aimed at discharging with fidelity. I trust you, Gentlemen, will do the like: that you will examine and judge with a becoming temper of mind; remembering that they who are *under oath* to declare the *whole truth*, think and act very differently from by-standers, who, being under no ties of this kind, take a latitude which is by no means admissible in a *court of law*.

I cannot close this cause better, than by desiring you to consider well the genius and spirit of the law, which will be laid down, and to govern yourselves by this great standard of truth. To some purposes, you may be said, Gentlemen, to be *Ministers of justice*: and "Ministers (says a learned Judge) "appointed for the ends of public justice should have written on their *hearts* the solemn engagements of his Majesty, (at his coronation) to cause law and justice *in mercy* to be executed in *all* his judgments."

"The quality of *mercy* is not strained;
"It droppeth like the gentle rain from heaven——
"——It is twice blessed;
"It blesses *him that gives*, and *him that takes*."

I leave you, gentlemen, hoping you will be directed in your inquiry and judgment to a right discharge of your duty. We shall all of us, gentlemen, have an hour of cool reflection—when the feelings and agitations of the day shall have subsided; when we shall view things through a different, and a much juster medium. It is *then* we all wish, an absolving conscience. May you, gentlemen, now act such a part, as will hereafter insure it;—such a part as may occasion the prisoners to rejoice. May the blessing of those, who were in jeopardy of life, come upon you—may the blessing of him who is "*not faulty to die*," descend and rest upon you and your posterity.

JOHN ADAMS, Esq.

May it please your Honors, and you, Gentlemen of the Jury,

I am for the prisoners at the bar, and shall apologize for it only in the words of the Marquis Beccaria, "If I can but be the instrument of preserving one life, his blessing and tears of transport, shall be a sufficient consolation to me, for the contempt of all mankind." As the prisoners stand before you for their lives, it may be proper, to recollect with what temper the law requires we should proceed to this trial. The form of proceeding at their arraignment, has discovered that the spirit of the law upon such occasions, is conformable to humanity, to common sense and feeling; that it is all benignity and candor. And the trial commences with the prayer of the Court, expressed by the Clerk, to the Supreme JUDGE of Judges, empires and worlds: "God send you a good deliverance."

We find, in the rules laid down by the greatest English Judges, who have been the brightest of mankind;—we are to look upon it as more beneficial, that many guilty persons should escape unpunished, than one innocent person should suffer. The reason is, because it is of more importance to the community, that innocence should be protected, than it is, that guilt should be punished; for guilt and crimes are so frequent in the world, that all of them cannot be punished; and many times they happen in such a manner, that it is not of much consequence to the public, whether they are punished or not. But when innocence itself, is brought to the bar and condemned, especially to die, the subject will exclaim, it is immaterial to me whether I behave well or ill, for virtue itself is no security. And if such a sentiment as this should take place in the mind of the subject, there would be an end to all security whatsoever. I will read the words of the law itself.

The rules I shall produce to you from Lord Chief Justice Hale, whose character as a lawyer, a man of learning and philosophy, and as a christian, will be disputed by nobody living; one of the greatest and best characters the English nation ever produced: his words are these. 2. H. H. P. C. *Tutius semper est errare, in acquietando, quam in puniendo, ex-parte misericordiæ, quam ex-parte justitiæ*—it is always safer to err in acquitting, than punishing, on the part of mercy, than the part of justice: The next is from the same authority, 305, *Tutius erratur ex-parte mitiori*—it is always safer to err on the milder side, the side of mercy, H.H.P.C. 509, the best rule in doubtful cases, is, rather to incline to acquittal than conviction: and in page 300, *Quod dubitas ne feceris*—where you are doubtful never act; that is, if you doubt of the prisoner's guilt, never declare him guilty; this is always the rule, especially in cases of life. Another rule from the same author, 289, where he says in some cases presumptive evidence goes far to prove a person guilty, though there is no express proof of the fact, to be committed by him; but then it must be very warily pressed, for it is better five guilty persons should escape unpunished, than one innocent person should die.

The next authority shall be from another Judge, of equal character, considering the age wherein he lived; that is Chancellor Fortescue, in praise of the laws of England, page 59; this is a very ancient writer on the English law: his words are, "Indeed one would rather, much rather that twenty guilty persons escape the punishment of death, than one innocent person be condemned, and suffer capitally." Lord Chief Justice Hale says, it is better five guilty persons escape, than one innocent person suffer. Lord Chancellor Fortescue, you see, carries the matter farther, and says, indeed one had rather, much rather, that twenty guilty persons should escape, than one innocent person suffer capitally. Indeed this rule is not peculiar to the English law, there never was a system of laws in the world, in which this rule did not prevail; it prevailed in the ancient Roman law, and which is more remarkable, it prevails in the modern Roman law; even the Judges in the Courts of Inquisition, who with racks, burnings and scourges, examine criminals, even there, they preserve it as a maxim, that it is better the guilty should escape punishment, than the innocent suffer. *Satius esse nocentem absolvi quam insontem damnari*—this is the temper we ought to set out with, and these the rules we are to be governed by. And I shall take it for granted, as a first principle, that the eight prisoners at the bar had better be all acquitted, though we should admit them all to be guilty, than that any one of them should by your verdict be found guilty, being innocent.

I shall now consider the several divisions of law, under which the evidence will arrange itself.

The action now before you, is homicide ; that is, the killing of one man by another ; the law calls it homicide, but it is not criminal in all cases for one man to slay another. Had the prisoners been on the Plains of Abraham, and slain an hundred Frenchmen a piece, the English law would have considered it as a commendable action, virtuous and praiseworthy : so that every instance of killing a man, is not a crime in the eye of the law ; there are many other instances which I cannot enumerate, an officer that executes a person under sentence of death, &c. So that, gentlemen, every instance of one man's killing another, is not a crime, much less a crime to be punished with death. But to descend to some more particulars.

The law divides homicide into three branches ; the first is justifiable, the second excusable, and the third felonious ; felonious homicide is subdivided into two branches ; the first is murder, which is killing with malice aforethought, the second is manslaughter, which is killing a man on a sudden provocation : here, gentlemen, are four sorts of homicide, and you are to consider, whether all the evidence amounts to the first, second, third, or fourth, of these heads. The fact, was the slaying five unhappy persons that night ; you are to consider, whether it was justifiable, excusable, or felonious ; and if felonious, whether it was murder or manslaughter. One of these four it must be, you need not divide your attention to any more particulars. I shall, however, before I come to the evidence, show you several authorities which will assist you and me in contemplating the evidence before us.

I shall begin with justifiable homicide : If an officer, a sheriff, execute a man on the gallows, draws and quarters him, as in case of high treason, and cuts off his head, this is justifiable homicide, it is his duty. So also, gentlemen, the law has planted fences and barriers around every individual ; it is a castle round every man's person, as well as his house. As the love of God and our neighbour, comprehends the whole duty of man, so self-love and social, comprehend all the duties we owe to mankind, and the first branch is self-love, which is not only our indisputable right, but our clearest duty ; by the laws of nature, this is interwoven in the heart of every individual ; God Almighty, whose laws we cannot alter, has implanted it there, and we can annihilate ourselves, as easily as root out this affection for ourselves. It is the first and strongest principle in our nature ; Justice Blackstone calls it "the primary canon in the law of nature." That precept of our holy religion which commands us to love our neighbour as ourselves, doth not command us to love our neighbour better than ourselves, or so well, no christian divine hath given this interpretation. The precept enjoins, that our benevolence to our fellow men, should be as real and sincere, as our affections to ourselves, not that it should be as great in degree. A man is authorized, therefore, by common sense, and the laws of England, as well as those of nature, to love himself better than his fellow subject : if two persons are cast away at sea, and get on a plank, (a case put by Sir Francis Bacon,) and the plank is insufficient to hold them both, the one hath a right to push the other off to save himself. The rules of the common law therefore, which authorize a man to preserve his own life at the expense of another's, are not contradicted by any divine or moral law. We talk of liberty and property, but, if we cut up the law of self-defence, we cut up the foundation of both, and if we give up this, the rest is of very little value, and therefore this principle must be strictly attended to, for whatsoever the law pronounces in the case of these eight soldiers will be the law, to other persons and after ages, all the persons that have slain mankind in this country, from the

beginning to this day, had better have been acquitted, than that a wrong rule and precedent should be established.

I shall now, read to you a few authorities on this subject of self-defence. Foster 273, in the case of justifiable self-defence, "The injured party may repel force with force in defence of his person, habitation, or property against one who manifestly intendeth and endeavoureth with violence, or surprize, to commit a known felony upon either."—In these cases, he is not obliged to retreat, but may pursue his adversary, till he findeth himself out of danger, and if in a conflict between them he happeneth to kill, such killing is justifiable." Kelyng, 128, 129. I must entreat you, to consider the words of this authority; the injured person may repel force by force against any who endeavours to commit any kind of felony on him or his; here the rule is, I have a right to stand on my own defence, if you intend to commit felony; if any of the persons made an attack on these soldiers, with an intention to rob them, if it was but to take their hats feloniously, they had a right to kill them on the spot, and had no business to retreat; if a robber meets me in the street, and commands me to surrender my purse, I have a right to kill him without asking questions; if a person commits a bare assault on me, this will not justify killing, but if he assaults me in such a manner, as to discover an intention, to kill me, I have a right to destroy him, that I may put it out of his power to kill me. In the case you will have to consider, I do not know there was any attempt to steal from these persons; however, there were some persons concerned, who would probably enough have stolen, if there had been any thing to steal; and many were there who had no such disposition, but this is not the point we aim at, the question is, are you satisfied, the people made the attack in order to kill the soldiers? If you are satisfied that the people, whoever they were, made that assault, with a design to kill or maim the soldiers, this was such an assault, as will justify the soldiers killing in their own defence. Further, it seems to me we may make another question, whether you are satisfied that their real intention was to kill or maim or not? If any reasonable man, in the situation of one of these soldiers, would have had reason to believe in the time of it, that the people came with an intention to kill him, whether you have this satisfaction now, or not in your own minds, they were justifiable, at least excusable in firing; you and I, may be suspicious that the people who made this assault on the soldiers, did it to put them to the flight, on purpose that they might go exulting about the town afterwards in triumph; but this will not do, you must place yourselves in the situation of Wemms or Killroy, consider yourselves as knowing that the prejudices of the world about you, were against you; that the people about you, thought you came to dragoon them into obedience to statutes, instructions, mandates and edicts, which they thoroughly detested; that many of these people were thoughtless and inconsiderate, old and young, sailors and landmen, negroes and mulattos; that they, the soldiers had no friends about them, the rest were in opposition to them; with all the bells ringing, to call the town together to assist the people in King street; for they knew by that time, that there was no fire; the people shouting, huzzaing, and making the mob whistle as they call it, which when a boy makes it in the street, is no formidable thing, but when made by a multitude, is a most hideous shriek, almost as terrible as an Indian yell; the people crying kill them! kill them! knock them over! heaving snow balls, oyster shells, clubs, white birch sticks three inches and an half diameter, consider yourselves, in this situation, and then judge, whether a reasonable man in the soldiers' situation, would not have concluded they were going to kill him. I believe, if I were to re-

verse the scene, I should bring it home to our own bosoms ; suppose col. Marshall, when he came out of his own door, and saw these grenadiers coming down with swords, &c. had thought it proper to have appointed a military watch ; suppose he had assembled Gray and Attucks that were killed, or any other persons in town, and had planted them in that station as a military watch, and there had come from Murray's barracks, thirty or forty soldiers, with no other arms than snow balls, cakes of ice, oyster shells, cinders and clubs, and attacked this military watch in this manner, what do you suppose would have been the feelings and reasonings of any of our householders ; I confess I believe they would not have borne the one half of what the witnesses have sworn the soldiers bore, till they had shot down as many as were necessary to intimidate and disperse the rest ; because, the law does not oblige us to bear insults to the danger of our lives, to stand still with such a number of people round us, throwing such things at us, and threatening our lives, until we are disabled to defend ourselves.

" Where a known felony, is attempted upon the person, be it to rob, or murder, here the party assaulted may repel force with force, and even his own servant then attendant on him, *or any other person present*, may interpose for preventing mischief, and if death ensues, the party so interposing will be justified.—In this case nature and social duty co-operate." Foster 274.

Hawkins P. C. chap. xxviii, § 25, towards the end, " Yet it seems that a private person, a *fortiori*, an officer of justice, who happens unavoidably to kill another in endeavouring to defend himself from, or suppress dangerous rioters, may justify the fact, inasmuch as he only does his duty in aid of the public justice." Section 24. " And I can see no reason why a person, who without provocation is assaulted by another, in any place whatsoever, in such a manner as plainly shews an intent to murder him, as by discharging a pistol, or pushing at him with a drawn sword, &c. may not justify killing such an assailant, as much as if he had attempted to rob him : For is not he who attempts to murder me more injurious than he who barely attempts to rob me ? And can it be more justifiable to fight for my goods than for my life ; and it is not only highly agreeable to reason that a man in such circumstances, may lawfully kill another, but it seems also to be confirmed by the general tenor of our law books which speaking of homicide *se defendendo*, suppose it done in some quarrel or affray."

" And so perhaps the killing of dangerous rioters, may be justified by any private persons, who cannot otherwise suppress them, or defend themselves from them ; inasmuch as every private person seems to be authorized by the law, to arm himself for the purposes aforesaid." Hawkins, p. 71. sec. 14. Here every private person is authorized to arm himself, and on the strength of this authority, I do not deny the inhabitants had a right to arm themselves at that time, for their defence, not for offence, that distinction is material and must be attended to.

Hawkins, p. 75. sec. 14. " And not only he who on an assault retreats to the wall or some such strait, beyond which he can go no further, before he kills the other, is judged by the law to act upon unavoidable necessity ; but also he who being assaulted in such a manner, and in such a place, that he cannot go back without manifestly endangering his life, kills the other without retreating at all." § 16. " And an officer who kills one that insults him in the execution of his office, and where a private person, that kills one who feloniously assaults him in the high way, may justify the fact without ever giving back at all."

There is no occasion for the Magistrate to read the Riot act. In the case before you, I suppose you will be satisfied when you come to examine the witnesses, and compare it with the rules of the common law, abstracted from all mutiny acts and articles of war, that these soldiers were in such a situation, that they could not help themselves; people were coming from Royal-exchange lane, and other parts of the town, with clubs, and cord wood sticks; the soldiers were planted by the wall of the Custom house; they could not retreat, they were surrounded on all sides, for there were people behind them as well as before them; there were a number of people in Royal-exchange lane; the soldiers were so near to the Custom house, that they could not retreat, unless they had gone into the brick wall of it. I shall shew you presently, that all the party concerned in this unlawful design, were guilty of what any one of them did; if any body threw a snowball, it was the act of the whole party; if any struck with a club, or threw a club, and the club had killed any body, the whole party would have been guilty of murder in law.

Lord C. J. HOLT, in Mawgridge's Case, Kelyng 128, says, "Now it hath been held, that if A of his malice prepensed assaults B to kill him, and B draws his sword and attacks A and pursues him, then A for his safety gives back, and retreats to a wall, and B still pursuing him with his drawn sword, A in his defence kills B. This is murder in A. For A having malice against B, and in pursuance thereof endeavouring to kill him, is answerable for all the consequences of which he was the original cause. It is not reasonable for any man that is dangerously assaulted, and when he perceives his life in danger from his adversary, but to have liberty for the security of his own life, to pursue him that maliciously assaulted him; for he that hath manifested that he hath malice against another, is not fit to be trusted with a dangerous weapon in his hand.—And so resolved by all the Judges when they met at Seargeant's Inn, in preparation for my Lord Morley's trial."

In the case here, we will take Montgomery, if you please, when he was attacked by the stout man with the stick, who aimed it at his head, with a number of people round him, crying out, kill them! kill them! had he not a right to kill the man. If all the party were guilty of the assault made by the stout man, and all of them had discovered malice in their hearts, had not Montgomery a right, according to Lord Chief Justice Holt, to put it out of their power to wreak their malice upon him. I will not at present, look for any more authorities in the point of self-defence; you will be able to judge from these, how far the law goes, in justifying or excusing any person in defence of himself, for taking away the life of another who threatens him, in life or limb: the next point is this, That in case of an unlawful assembly, all and every one of the assembly is guilty of all and every unlawful act, committed by any one of that assembly, in prosecution of the unlawful design they set out upon.

Rules of law should be universally known, whatever effect they may have on politics; they are rules of common law, the law of the land; and it is certainly true, that wherever there is an unlawful assembly, let it consist of many persons or a few, every man in it is guilty of every unlawful act committed by any one of the whole party, be they more or be they less, in pursuance of their unlawful design. This is the policy of the law: to discourage and prevent riots, insurrections, tubulence and tumults.

In the continual vicissitudes of human things, amidst the shocks of fortune and the whirls of passion, that take place at certain critical seasons, even in the mildest government, the people are liable to run into riots and tumults.——There are church quakes and state quakes, in the moral

and political world, as well as earthquakes, storms and tempests, in the physical. Thus much however must be said in favour of the people and of human nature, that it is a general, if not an universal truth, that the aptitude of the people to mutinies, seditions, tumults and insurrections, is in direct proportion to the despotism of the government. In governments completely despotic, *i. e.* where the will of one man, is the only law, this disposition is most prevalent; in aristocracies, next; in mixed monarchies, less than either of the former; in complete republics, the least of all; and under the same form of government as in a limited monarchy, for example, the virtue and wisdom of the administration, may generally be measured by the peace and order that are seen among the people. However this may be, such is the imperfection of all things in this world, that no form of government, and perhaps no wisdom or virtue in the administration, can at all times avoid riots and disorders among the people.

Now it is from this difficulty, that the policy of the law hath framed such strong discouragements, to secure the people against tumults; because when they once begin, there is danger of their running to such excesses, as will overturn the whole system of government.——There is the rule from the reverend sage of the law, so often quoted before.

I. H. H. P. C. 437. "All present, aiding and assisting, are equally principal with him that gave the stroke, whereof the party died. For though one gave the stroke, yet in interpretation of law, it is the stroke of every person, that was present aiding and assisting."

I. H. H. P. C. 440. "If divers come with one assent to do mischief, as to kill, rob, or beat, and one doth it, they are all principals in the felony. If many be present, and one only gives the stroke whereof the party dies, they are all principal, if they came for that purpose."

Now if the party at Dock square, came with an intention only to beat the soldiers, and began the affray with them, and any of them had been accidentally killed, it would have been murder, because it was an unlawful design they came upon; if but one does it, they are all considered in the eye of the law to be guilty, if any one gives the mortal stroke, they are all principal here, therefore there is a reversal of the scene; if you are satisfied that these soldiers were there on a lawful design and it should be proved any of them shot without provococation and killed any body, he only is answerable for it. 1st. Hale's P. C.

I. H. H. P. C. 444. "Although if many come upon an unlawful design, and one of the company kill one of the adverse party, in pursuance of that design, all are principals: yet if many be together upon a lawful account, and of the company, kill another of an adverse party, without any particular abettment of the rest to this fact of homicide, they are not all guilty that are of the company, but only those that gave the stroke or actually abetted him to do it."

I. H. H. P. C. 445. "In the case of a riotous assembly to rob or steal deer, or do any unlawful act of violence, there the offence of one, is the offence of all the company."

In another place, I. H. H. P. C. 439. "The Lord Dacre and divers others went to steal deer in the park of one Pelham—Raydon one of the company, killed the keeper in the park; the Lord Dacre and the rest of the company being in the other part of the park. Yet it was adjudged murder in them all, and they died for it. And he quotes Crompton, 25. Dalton, 93, p. 241." So that in so strong a case as this, where this nobleman set out to hunt deer in the ground of another, he was in one part of the park, his company in another part, yet they were all guilty of murder."

The next is Hale's Pleas of the Crown, 1. H. H. P. C. 440. "The case of Draton Bassit, diverse persons doing an unlawful act, all are guilty of what is done by one."

Foster, 353, 354. "A general resolution against all opposers, whether such resolution appears upon evidence to have been actually and implicitly entered into by the confederates, or may reasonably be collected from their number, arms or behaviour, at, or before the scene of action, such resolutions, so proved, have always been considered as strong ingredients in cases of this kind. And in cases of homicide, committed in consequence of them, every person present, in the sense of the law, when the homicide hath been committed, hath been involved in the guilt of him that gave the mortal blow."

Foster. "The cases of Lord Dacre mentioned by Hale, and of Pudsey, reported by Crompton, and cited by Hale, turned upon this point. The offences they respectively stood charged with as principals, were committed far out of their sight and hearing; and yet both were held to be present. It was sufficient, that at the instant the facts were committed, they were of the same party and upon the same pursuit, and under the same engagements and expectations of mutual defence and support, with those that did the facts."

Thus far I have proceeded, and I believe it will not be hereafter disputed by any body, that this law ought to be known to every one who has any disposition to be concerned in an unlawful assembly, whatever mischief happens in the prosecution of the design they set out upon, all are answerable for it. It is necessary we should consider the definitions of some other crimes, as well as murder; sometimes one crime gives occasion to another, an assault is sometimes the occasion of manslaughter, sometimes of excusable homicide. It is necessary to consider what is a riot. 1. Hawk. c. lxv. § 2. I shall give you the definition of it. "Wheresoever more than three persons use force or violence, for the accomplishment of any design whatever, all concerned are rioters."

Were there not more than three persons in Dock square? Did they not not agree to go to King street, and attack the main guard? Where then, is the reason for hesitation, at calling it a riot? If we cannot speak the law as it is, where is our liberty? And this is law, that wherever more than three persons are gathered together, to accomplish any thing with force, it is a riot. 1. Hawk. c. lxv. § 2. "Wherever more than three, use force and violence, all who are concerned therein are rioters: But in some cases wherein the law authorizes force, it is lawful and commendable to use it. As for a sheriff, 2. and 67. Poph. 121. or constable, 3. H. 7. 10. 6. or perhaps even for a private person, Poph. 121, Moore, 656, to assemble a competent number of people in order, with force to oppose rebels, or enemies, or rioters, and afterwards with such force, actually to suppress them."

I do not mean to apply the word rebel on this occasion: I have no reason to suppose that ever there was one in Boston, at least among the natives of the country; but rioters are in the same situation, as far as my argument is concerned, and proper officers may suppress rioters, and so may even private persons.

If we strip ourselves free from all military laws, mutiny acts, articles of war and soldiers' oaths, and consider these prisoners as neighbours, if any of their neighbours were attacked in King street, they had a right to collect together to suppress this riot and combination. If any number of persons meet together at a fair, or market, and happen to fall together by the ears, they are not guilty of a riot, but of a sudden affray: here is another paragraph which I must read to you. 1. Hawkins, c. lxv. § 3,

"If a number of persons being met together at a fair or market, or on any other *lawful* and *innocent occasion*, happen on a sudden quarrel, to fall together by the ears, they are not guilty of a riot, but of a sudden affray only, of which none are guilty, but those who actually engage in it," &c. end of the §. It would be endless, as well as superfluous, to examine, whether every particular person engaged in a riot, were in truth one of the first assembly, or actually had a previous knowledge of the design thereof.

I have endeavoured to produce the best authorities, and to give you the rules of law in their words, for I desire not to advance any thing of my own. I choose to lay down the rules of law, from authorities which cannot be disputed.—Another point is this, whether, and how far, a private person may aid another in distress? Suppose a press gang should come on shore in this town, and assault any sailor, or householder in King street, in order to carry them on board one of his Majesty's ships and impress him without any warrant, as a seaman in his Majesty's service, how far do you suppose the inhabitants would think themselves warranted by law to interpose against that lawless press gang! I agree that such a press gang would be as unlawful an assembly as that was in King street. If they were to press an inhabitant, and carry him off for a sailor, would not the inhabitants think themselves warranted by law to interpose in behalf of their fellow citizens? Now, Gentlemen, if the soldiers had no right to interpose in the relief of the sentry, the inhabitanis would have no right to interpose with regard to the citizen, for whatever is law for a soldier, is law for a sailor and for a citizen, they all stand upon an equal footing in this respect. I believe we shall not have it disputed, that it would be lawful to go into King-street and help an honest man there against the press master. We have many instances in the books which authorize it, which I shall produce to you presently.

Now suppose you should have a jealousy in your minds, that the people who made this attack on the sentry, had nothing in their intention more than to take him off his post, and that was threatened by some; suppose they intended to go a little farther, and tar and feather him, or to ride him (as the phrase is in Hudibras) he would have had a good right to have stood upon his defence, the defence of his liberty, and if he could not preserve that without hazard to his own life, he would be warranted in depriving those of life who were endeavouring to deprive him of his; that is a point I would not give up for my right hand, nay, for my life.

Well, I say, if the people did this, or if this was only their intention, surely the officer and soldiers had a right to go to his relief, and therefore they set out upon a lawful errand, they were therefore a lawful assembly, if we only consider them as private subjects and fellow citizens, without regard to mutiny acts, articles of war, or soldiers' oaths; a private person, or any number of private persons, have a right to go to the assistance of their fellow subject in distress and danger of his life, when assaulted and in danger from a few or a multitude. Keyl. 136. "If a man perceives another by force to be injuriously treated, pressed and restrained of his liberty, though the person abused doth not complain, or call for aid or assistance, and others out of compassion shall come to his rescue, and kill any of those that shall so restrain him, that is manslaughter, Keyl.—A and others without any warrant, impress B to serve the king at sea, B quietly submitted and went off with the press master:—Hugett and the others pursued them, and required a sight of their warrant; but they shewing a piece of paper that was not a sufficient warrant, thereupon Hugett with the others drew their swords, and the press masters theirs, and so there was a combat, and those who endeavoured to

rescue the pressed man killed one of the pretended press masters. This was but manslaughter, for when the liberty of one subject is invaded, it affects all the rest: it is a provocation to all people, as being of ill example and pernicious consequences."

2. Lord Raymond, 1301. The Queen *versus* Tooley *et alios* Lord Chief Justice Holt says, 3d. "The prisoner (*i. e.* Tooley) in this case had sufficient provocation; for if one be imprisoned upon an unlawful authority, it is a sufficient provocation to all people out of compassion;—and where the liberty of the subject is invaded, it is a provocation to all the subjects of England, &c. and sure a man ought to be concerned for magna charta and the laws; and if any one against the law imprisons a man, he is an offender against magna charta."

I am not insensible of Sir Michael Foster's observations on these cases, but apprehend they do not invalidate the authority of them as far as I now apply them to the purpose of my argument.—If a stranger, a mere fellow subject may interpose to defend the liberty, he may to defend the life of another individual. But according to the evidence, some imprudent people before the sentry, proposed to take him off his post, others threatened his life, and intelligence of this was carried to the main guard, before any of the prisoners turned out: They were then ordered out to relieve the sentry, and any of our fellow citizens might lawfully have gone upon the same errand; they were therefore a lawful assembly.

I have but one point more of law to consider, and that is this: In the case before you, I do not pretend to prove that every one of the unhappy persons slain, were concerned in the riot; the authorities read to you just now, say, it would be endless to prove, whether every person that was present and in a riot, was concerned in planning the first enterprise or not: nay, I believe it but justice to say, some were perfectly innocent of the occasion, I have reason to suppose that one of them was Mr. Maverick; he was a very worthy young man, as he has been represented to me, and had no concern in the riotous proceedings of that night; and I believe the same may be said, in favour of one more at least, Mr. Caldwell, who was slain; and therefore many people may think, that as he, and perhaps another was innocent, therefore innocent blood having been shed, that must be expiated by the death of somebody or other. I take notice of this, because one gentleman nominated by the sheriff, for a juryman upon this trial, because he had said, he believed Capt. Preston was innocent, but innocent blood had been shed, and therefore somebody ought to be hanged for it, which he thought was indirectly giving his opinion in this cause. I am afraid many other persons have formed such an opinion; I do not take it to be a rule, that where innocent blood is shed, the person must die. In the instance of the Frenchmen on the Plains of Abraham, they were innocent, fighting for their king and country, their blood is as innocent as any, there may be multitudes killed, when innocent blood is shed on all sides, so that it is not an invariable rule. I will put a case in which, I dare say, all will agree with me; Here are two persons, the father and the son, go out a hunting, they take different roads, the father hears a rushing among the bushes, takes it to be game, fires and kills his son through a mistake; here is innocent blood shed, but yet nobody will say the father ought to die for it. So that the general rule of law is, that whenever one person hath a right to do an act, and that act, by any accident, takes away the life of another it is excusable, it bears the same regard to the innocent as to the guilty. If two men are together and attack me, and I have a right to kill them, I strike at them, and by mistake strike a third and kill him, as I had a right to kill

the first my killing the other will be excusable, as it happened by accident. If I in the heat of passion, aim a blow at the person who has assaulted me, aiming at him, I kill another person, it is but manslaughter. Foster, 261. § 3. " If an action unlawful in itself be done deliberately and with intention of mischief or great bodily harm to particulars, or of mischief indiscriminately, fall it where it may, and death ensues against or beside the original intention of the party, it will be murder. But if such mischievous intention doth not appear, which is matter of fact and to be collected from circumstances, and the act was done heedlessly and inconsiderately, it will be manslaughter ; not accidental death, because the act upon which death ensued, was unlawful."

" Under this head, &c. [*See the remainder inserted in pages* 80, 81.]

Supposing in this case, the Mulatto man was the person made the assault, suppose he was concerned in the unlawful assembly, and this party of soldiers endeavouring to defend themselves against him, happened to kill another person who was innocent, though the soldiers had no reason that we know of, to think any person there, at least of that number who were crowding about them innocent, they might naturally enough presume all to be guilty of the riot and assault, and to come with the same design ; I say, if on firing on these who were guilty, they accidentally killed an innocent person, it was not their fault, they were obliged to defend themselves against those who were pressing upon them, they are not answerable for it with their lives, for upon supposition it was justifiable or excusable to kill Attucks or any other person, it will be equally justifiable or excusable if in firing at him, they killed another who was innocent, or if the provocation was such as to mitigate the guilt to manslaughter, it will equally mitigate the guilt, if they killed an innocent man undesignedly, in aiming at him who gave the provocation, according to Judge Foster, and as this point is of such consequence, I must produce some more authorities for it ; 1. Hawkins, 84. "Also, if a third person accidentally happen to be killed, by one engaged in a combat with another upon a sudden quarrel, it seems that he who kills him, is guilty of manslaughter only, &c. H. H. P. C. 442. To the same point, and 1. H. H. P. C. 484. and 4. Black. 2.

I shall now consider one question more, and that is concerning provocation.* We have hitherto been considering self-defence, and how far persons may go in defending themselves against aggressors, even by taking away their lives, and now proceed to consider, such provocations as the law allows to mitigate or extenuate the guilt of killing, where it is not justifiable or excusable.

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* *The distinction between Murder and Manslaughter, is more easily confounded than many other distinctions of law relative to homicide.—And many persons among us seem to think that the punishment of death ought to be inflicted upon all voluntary killing one private man by another, whether done suddenly or deliberately, cooly or in anger.--These received notions may have originated partly from a false construction of the general precept to Noah, whoso sheddeth man's blood, by man shall his blood be shed.—But may not some of these mistaken notions have been derived from law books.—We find the distinction between murder and manslaughter, sometimes attributed to the peculiar benignity of the English law, and it is sometimes represented that the particular fact which the law of England calls manslaughter, and indulges with Clergy, is punished with death in all other laws.*

Vide Observations on the Statutes, page 54. *By the law of Scotland, there is no such thing as manslaughter, nor by the civil law ; and therefore a criminal indicted for murder under the Statute of Henry the Eighth, where the Judges proceed by the rules of the civil law, must either be found guilty of the*

An assault and battery committed upon a man in such a manner as not to endanger his life, is such a provocation as the law allows to reduce killing down to the crime of manslaughter. Now the law has been made on more consideration than we are capable of making at present; the law considers a man as capable of bearing any thing and every thing but blows. I may reproach a man as much as I please, I may call him a thief, robber, traitor, scoundrel, coward, lobster, bloody back, &c. and if he kills me it will be murder, if nothing else but words precede; but if from giving him such kind of language, I proceed to take him by the nose, or fillip him on the forehead, that is an assault, that is a blow; the law will not oblige a man to stand still and bear it; there is the distinction; hands off, touch me not; as soon as you touch me, if I run you through the heart it is but manslaughter; the utility of this distinction, the more you

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murder or acquitted—and in another place, Observations on the Statutes, 422. Note (z.) *I have before observed that by the civil law, as well as the law of Scotland, there is no such offence, as what is with us termed manslaughter:* Sir Michael Foster, 288. *If taking general verdicts of acquittal, in plain cases of death,* Per Infortunium, &c. *deserveth the name of a deviation, it is far short of what is constantly practised at an Admiralty sessions, under* 28. *H.* 8. *with regard to offences not ousted of Clergy by particular Statutes, which had they been committed at land would have been entitled to Clergy.—In these cases the Jury is constantly directed to acquit the prisoner; because the marine law doth not allow of Clergy in any case, and therefore in an indictment for murder on the high seas, if the fact cometh out upon evidence to be no more than manslaughter, supposing it to have been committed at land, the prisoner is constantly acquitted.*

2. *Lord Raymond* 1496. *His Lordship says,* "*From these cases it appears, that though the law of England, is so far peculiarly favourably (I use the word peculiarly because I know of no other law, that makes such a distinction between murder and manslaughter) as to permit the excess of anger and passion (which a man ought to keep under and govern) in some instances to extenuate the greatest of private injuries, as the taking away a man's life is; yet in these cases, it must be such a passion, as for the time deprives him of his reasoning faculties.*

I shall not enter into any inquiry, how far the Admiralty sessions in England, or a Special Court of Admiralty in America ought to proceed by the rules of civil law, though it is a question of immense importance to Americans, but I must beg leave to observe that though the distinction between murder and manslaughter is not found in words in the civil law, yet the distinction between homicide, with deliberation and without deliberation, and on a sudden provocation is well known in that law, and the former is punished with death, the latter with some inferior corporal punishment at the discretion of the Judges.

Indeed the civil law is more favourable and indulgent to sudden anger and resentment than the common law, and allows many things to be a provocation sufficient to exempt the person killing from the Pœna ordinaria, *which is death, which the common law considers as a slight provocation or none at all.*

Cod. Lib. 9. *Tit.* 16. *note* 46.—*Gail, page* 503.—*Maranta, page* 49. *Par.* 4. *Dist.* 1. 77.

It should seem from these authorities, that the lenity and indulgence of the laws of England, is not unnatural, extraordinary, or peculiar, and instead of being unknown in the civil law, that it is carried much further in many respects than in the common law.—And indeed it seems that the like indulgence, was permitted in the Jewish law—though it has been so often represented as peculiar to the English law, that many persons seem to think it unwarrantable, and tending to leave the guilt of blood upon the land.

think of it, the more you will be satisfied with it ; it is an assault whenever a blow is struck, let it be ever so slight, and sometimes even without a blow. The law considers man as frail and passionate, when his passions are touched he will be thrown off his guard, and therefore the law makes allowances for this frailty, considers him as in a fit of passion, not having the possession of his intellectual faculties, and therefore does not oblige him to measure out his blows with a yard stick, or weigh them in a scale ; let him kill with a sword, gun or hedge stake, it is not murder, but only manslaughter. Kelyng's Reports, 135. Regina *versus* Mawgridge. " Rules supported by authority and general consent, shewing what are always allowed to be sufficient provocations. First, if one man *upon any words shall make an assault* upon another, either by *pulling him by the nose, or filliping upon the forehead*, and he that is so assaulted shall draw his sword and immediately run the other through, that is but manslaughter ; for the peace is broken by the person killed, and with an indignity to him that received the assault. Besides, he that was so affronted might reasonably apprehend, that he that treated him in that manner, might have some further design upon him." So that here is the boundary, when a man is assaulted, and kills in consequence of that assault, it is but manslaughter ; I will just read as I go along the definition of an assault. 1. Hawkins, chap. lxii. § 1. " An assault is an attempt or offer, with force or violence, to do a corporal hurt to another, as by striking at him, with or without a weapon, or presenting a gun at him, at such a distance to which the gun will carry, or pointing a pitchfork at him, or by any other such like act done in an angry, threatening manner, &c. But no words can amount to an assault." Here is the definition of an assault, which is a sufficient provocation to soften killing down to manslaughter. 1. Hawkins, chap. xxxi. §. 36. " Neither can he be thought guilty of a greater crime than manslaughter, who finding a man in bed with his wife, or being actually *struck by him*, or *pulled by the nose*, or *filliped upon the forehead*, immediately kills him, or in the defence of his person from an unlawful arrest ; or in the defence of his house, from those who claiming a title to it, attempt forcibly to enter it, and to that purpose shoot at it, &c." Every snow ball, oyster shell, cake of ice, or bit of cinder that was thrown that night at the sentinel, was an assault upon him ; every one that was thrown at the party of soldiers, was an assault upon them, whether it hit any of them or not. I am guilty of an assault if I present a gun at any person, whether I shoot at him or not, it is an assault, and if I insult him in that manner, and he shoots me, it is but manslaughter. Foster, 295, 6. " To what I have offered with regard to sudden rencounters, let me add, that the blood, already too much heated, kindleth afresh at every pass or blow. And in the tumult of the passions, in which mere instinct self-preservation hath no inconsiderable share, the voice of reason is not heard. And therefore, the law in condescension to the infirmities of flesh and blood doth extenuate the offence." Insolent, scurrilous, or slanderous language, when it precedes an assault, aggravates it. Foster 316. " We all know that words of reproach, how grating and offensive soever, are in the eye of the law, no provocation in the case of voluntary homicide, and yet every man who hath considered the human frame, or but attended to the workings of his own heart, knoweth that affronts of that kind pierce deeper, and stimulate in the veins more effectually, than a slight injury done to a third person, though under colour of justice, possibly can." I produce this to show the assault, in this case, was aggravated by the scurrilous language which preceded it. Such words of reproach stimulate in the veins and exasperate the mind, and no doubt if an assault

and battery succeeds them, killing under such a provocation is softened to manslaughter, but killing without such provocation, makes it murder.

Five o'clock, P. M. the Court adjourned till Tuesday morning, nine o'clock.

Tuesday, nine o'clock, the Court met according to adjournment, and Mr. ADAMS proceeded.

May it please your Honours, and you, Gentlemen of the Jury.

I yesterday afternoon produced from the best authorities, those rules of law which must govern all cases of homicide, particularly that which is now before you; it now remains to consider the evidence, and see whether any thing has occurred, that may be compared to the rules read to you; and I will not trouble myself nor you with laboured endeavours to be methodical, I shall endeavour to make some few observations on the testimonies of the witnesses, such as will place the facts in a true point of light, with as much brevity as possible; but I suppose it would take me four hours to read to you (if I did nothing else but read) the minutes of evidence that I have taken in this trial. In the first place the gentleman who opened this cause, has stated to you, with candour and precision, the evidence of the identity of the persons.

The witnesses are confident that they know the prisoners at the bar, and that they were present that night, and of the party; however, it is apparent, that witnesses are liable to make mistakes, by a single example before you. Mr. Bass, who is a very honest man, and of good character, swears positively that the tall man, Warren, stood on the right that night, and was the first that fired; and I am sure you are satisfied by this time, by many circumstances, that he is totally mistaken in this matter; this you will consider at your leisure. The witnesses in general did not know the faces of these persons before; very few of them knew the names of them before, they only took notice of their faces that night. How much certainty there is in this evidence, I leave you to determine.

There does not seem to me to be any thing very material in the testimony of Mr. Austin, except to the identity of M'Cauley, and he is the only witness to that. If you can be satisfied in your own minds, without a doubt, that he knew M'Cauley so well as to be sure, you will believe he was there.

The next witness is Bridgham, he says he saw the tall man Warren, but saw another man belonging to the same regiment soon after, so like him, as to make him doubt whether it was Warren or not; he thinks he saw the Corporal, but is not certain, he says he was at the corner of the Custom House, this you will take notice of; other witnesses swear he was the remotest man of all from him who fired first, and there are other evidences who swear the left man did not fire at all; if Wemms did not discharge his gun at all, he could not kill any of the persons, therefore he must be acquitted on the fact of killing; for an intention to kill, is not murder or manslaughter, if not carried into execution: The witness saw numbers of things thrown, and he saw plainly sticks strike the guns, about a dozen persons with sticks, gave three cheers, and surrounded the party, and struck the guns with their sticks several blows: This is a witness for the crown, and his testimony is of great weight for the prisoners; he gives his testimony very sensibly and impartially. He swears positively, that he not only saw ice or snow thrown, but saw the guns struck several times; if you believe this witness, of whose credibility you are wholly the judges, as you are of every other; if you do not believe him, there are many others who swear to circumstances in favour of the prisoners; it

should seem impossible you should disbelieve so great a number, and of crown witnesses too, who swear to such variety of circumstances, that fall in with one another so naturally to form our defence ; this witness swears positively, there were a dozen of persons with clubs, surrounded the party ; twelve sailors with clubs, were by much an overmatch to eight soldiers, chained there by the order and command of their officer, to stand in defence of the sentry, not only so, but under an oath to stand there, *i. e.* to obey the lawful command of their officer, as much, gentlemen of the jury, as you are under oath to determine this cause by law and evidence ; clubs they had not, and they could not defend themselves with their bayonets against so many people ; it was in the power of the sailors to kill one half or the whole of the party, if they had been so disposed ; what had the soldiers to expect, when twelve persons armed with clubs (sailors too, between whom and soldiers there is such an antipathy, that they fight as naturally when they meet, as the elephant and rhinoceros) were daring enough, even at the time when they were loading their guns, to come up with their clubs and smite on their guns ; what had eight soldiers to expect from such a set of people ? Would it have been a prudent resolution in them, or in any body in their situation, to have stood still to see if the sailors would knock their brains out or not ? Had they not all the reason in the world to think, that as they had done so much, they would proceed farther ? their clubs were as capable of killing as a ball, an hedge stake is known in the law books as a weapon of death, as much as a sword, bayonet or musket. He says the soldiers were loading their guns when the twelve surrounded them, the people went up to them within the length of their guns, and before the firing ; besides all this he swears they were called cowardly rascals, and dared to fire ; he says these people were all dressed *like* sailors ; and I believe that by and bye you will find evidence enough to satisfy you these were some of the persons that came out of Dock square, after making the attack on Murray's barracks, and who had been arming themselves with sticks from the butchers' stalls and cord wood piles, and marched up round Cornhill under the command of Attucks. All the bells in town were ringing, the rattling of the blows upon the guns he heard, and swears it was violent ; this corroborates the testimony of James Bailey, which will be considered presently. Some witnesses swear a club struck a soldier's gun, Bailey swears a man struck a soldier and knocked him down, before he fired, "the last man that fired, levelled at a lad, and moved his gun as the lad ran :" You will consider, that an intention to kill is not murder ; if a man lays poison in the way of another, and with an express intention that he should take it up and die of it, it is not murder : Suppose the soldier had malice in his heart, and was determined to murder that boy if he could, yet the evidence clears him of killing the boy, I say, admit he had malice in his heart, yet it is plain he did not kill him or any body else, and if you believe one part of the evidence, you must believe the other, and if he had malice, that malice was ineffectual ; I do not recollect any evidence that ascertains who it was that stood the last man but one upon the left, admitting he discovered a temper ever so wicked, cruel and malicious, you are to consider his ill temper is not imputable to another, no other had any intention of this deliberate kind, the whole transaction was sudden, there was but a very short space of time between the first gun and the last, when the first gun was fired the people fell in upon the soldiers and laid on with their weapons with more violence, and this served to increase the provocation, and raised such a violent spirit of revenge in the soldiers as the law takes notice of, and makes some allowance for, and in that fit of fury and madness, I suppose he aimed at the boy.

The next witness is Dodge, he says, there were fifty people near the soldiers pushing at them; now the witness before says, there were twelve sailors with clubs, but now here are fifty more aiding and abetting of them ready to relieve them in case of need; now what could the people expect? It was their business to have taken themselves out of the way; some prudent people by the Town-house, told them not to meddle with the guard, but you hear nothing of this from these fifty people; no, instead of that, they were huzzaing and whistling, crying damn you, fire! why don't you fire? So that they were actually assisting these twelve sailors that made the attack; he says the soldiers were pushing at the people to keep them off, ice and snow-balls were thrown, and I heard ice rattle on their guns, there were some clubs thrown from a considerable distance across the street. This witness swears he saw snow-balls thrown close before the party, and he took them to be thrown on purpose, he saw oyster-shells likewise thrown.—Mr. Langford the watchman, is more particular in his testimony, and deserves a very particular consideration, because it is intended by the counsel for the Crown, that his testimony shall distinguish Killroy from the rest of the prisoners, and exempt him from those pleas of justification, excuse or extenuation, which we rely upon for the whole party, because he had previous malice, and they would from hence conclude, he aimed at a particular person; you will consider all the evidence with regard to that by itself.

Hemmingway, the sheriff's coachman, swears he knew Killroy and that he heard him say, he would never miss and opportunity of firing upon the inhabitants: this is to prove that Killroy had preconceived malice in his heart, not indeed against the unhappy persons who were killed, but against the inhabitants in general, that he had the spirit not only of a *Turk* or an *Arab*, but of the devil; but admitting that this testimony is literally true, and that he had all the malice they would wish to prove, yet, if he was assaulted that night, and his life in danger, he had a right to defend himself as well as another man; if he had malice before, it does not take way from him the right of defending himself against any unjust aggressor. But it is not at all improbable, that there was some misunderstanding about these loose expressions; perhaps the man had no thoughts of what his words might import; many a man in his cups, or in anger, which is a short fit of madness, hath uttered the rashest expressions, who had no such savage disposition in general; so that there is but little weight in expressions uttered at a kitchen fire, before a maid and a coachman, where he might think himself at liberty to talk as much like a bully, a fool, and a madman as he pleased, and that no evil would come of it. Strictly speaking, he might mean no more than this, that he would not miss an opportunity of firing on the inhabitants, if he was attacked by them in such a manner as to justify it: soldiers have sometimes avoided opportunities of firing, when they would have been justified, if they had fired. I would recommend to them to be tender by all means, nay, let them be cautious at their peril; but still what he said amounts in strictness to no more than this: "If the inhabitants make an attack on me, I will not bear from them what I have done already;" or "I will bear no more, than what I am obliged by law to bear." No doubt it was under the fret of his spirits, the indignation, mortification, grief and shame, that he had suffered a defeat at the Rope-walks; it was just after an account of an affray was published here, betwixt the soldiers and inhabitants at New York. There was a little before the 5th of March, much noise in this town, and a pompous account in the news-papers, of a victory obtained by the inhabitants there over the soldiers; which doubtless excited the resentment of the soldiers

here, as well as exultations among some sorts of the inhabitants: and the ringing of the bells here, was probably copied from New York, a wretched example in this, and in two other instances at least; the defeat of the soldiers at the Rope-walks, was about that time too, and if he did, after that, use such expressions, it ought not to weigh too much in this case. It can scarcely amount to proof that he harboured any settled malice against the people in general. Other witnesses are introduced to show that Killroy had besides his general ill will against every body, particular malice against Mr. Gray, whom he killed, as Langford swears.

Some of the witnesses, have sworn that Gray was active in the battle at the Rope-walks, and that Killroy was once there, from whence the counsel for the Crown would infer, that Killroy; in King-street, on the 5th of March in the night, knew Gray whom he had seen at the Rope-walks before, and took that opportunity to gratify his preconceived malice; but if this is all true, it will not take away from him his justification, excuse, or extenuation, if he had any. The rule of the law is, if there has been malice between two, and at a distant time afterwards they meet, and one of them assaults the other's life, or only assaults him, and he kills in consequence of it, the law presumes the killing was in self defence, or upon the provocation, not on account of the antecedent malice. If therefore the assault upon Killroy was so violent as to endanger his life, he had as good a right to defend himself, as much as if he never had before conceived any malice against the people in general, or Mr. Gray in particular. If the assault upon him was such as to amount only to a provocation, not to a justification, his crime will be manslaughter only. However, it does not appear, that he knew Mr. Gray; none of the witnesses pretend to say he knew him, or that he ever saw him. It is true they were both at the Rope-walks at one time, but there were so many combatants on each side, that it is not even probable that Killroy should know them all, and no witness says there was any rencounter there between them two. Indeed, to return to Mr. Langford's testimony, he says, he did not perceive Killroy to aim at Gray, more than at him, but he says expressly, he did not aim at Gray.——Langford says, "Gray had no stick, was standing with his arms folded up."——This witness, is however most probably mistaken in this matter, and confounds one time with another, a mistake which has been made by many witnesses, in this case, and considering the confusion and terror of the scene, is not to be wondered at.

Witnesses have sworn to the condition of Killroy's bayonet, that it was bloody the morning after the 5th of March. The blood they saw, if any, might be occasioned by a wound given by some of the bayonets in the affray, possibly in Mr. Fosdick's arm, or it might happen, in the manner mentioned by my brother before. One bayonet at least was struck off and it might fall where the blood of some person slain afterwards flowed. It would be doing violence to every rule of law and evidence, as well as to common sense and the feelings of humanity, to infer from the blood on the bayonet, that it had been stabbed into the brains of Mr. Gray after he was dead, and that by Killroy himself who had killed him.

Young Mr. Davis swears, that he saw Gray that evening, a little before the firing, that he had a stick under his arm, and said he would go to the riot, "I am glad of it, (that is that there was a rumpus) I will go and have a slap at them, if I lose my life."—And when he was upon the spot, some witnesses swear, he did not act that peaceable inoffensive part, which Langford thinks he did. They swear, they thought him in liquor —that he ran about clapping several people on the shoulders saying, "Don't run away," they dare not fire." Langford goes on "I saw twenty

or five and twenty boys about the sentinel—and I spoke to him, and bade him not be afraid." How came the watchman Langford to tell him not to be afraid. Does not this circumstance prove, that he thought there was danger, or at least that the sentinel in fact was terrified and did think himself in danger. Langford goes on " I saw about twenty or five and twenty boys that is young shavers." We have been entertained with a great variety of phrases, to avoid calling this sort of people a mob. Some call them shavers, some call them geniuses. The plain English is, gentlemen, most probably a motley rabble of saucy boys, negroes and mulattoes, Irish teagues and outlandish jack tars.—And why we should scruple to call such a set of people a mob, I can't conceive, unless the name is too respectable for them: The sun is not about to stand still or go out, nor the rivers to dry up because there was a mob in Boston on the 5th of March that attacked a party of soldiers. Such things are not new in the world, nor in the British dominions, though they are comparatively, rareties and novelties in this town. Carr, a native of Ireland, had often been concerned in such attacks, and indeed, from the nature of things, soldiers quartered in a populous town, will always occasion two mobs, where they prevent one. They are wretched conservators of the peace!

Langford " heard the rattling against the guns, but saw nothing thrown." This rattling must have been very remarkable, as so many witnesses heard it, who were not in a situation to see what caused it. These things which hit the guns made a noise, those which hit the soldiers' persons did not; but when so many things were thrown and so many hit their guns, to suppose that none struck their persons is incredible. Langford goes on " Gray struck me on the shoulder and asked me what is to pay? I answered, I don't know, but I believe something will come of it, by and by." Whence could this apprehension of mischief arise, if Langford did not think the assault, the squabble, the affray was such as would provoke the soldiers to fire?—" a bayonet went through my great coat and jacket," yet the soldier did not step out of his place. This looks as if Langford was nearer to the party than became a watchman. Forty or fifty people round the soldiers, and more coming from Quaker-lane, as well as the other lanes. The soldiers heard all the bells ringing and saw people coming from every point of the compass to the assistance of those who were insulting, assaulting, beating and abusing them; what had they to expect but destruction, if they had not thus early taken measures to defend themselves?

Brewer saw Killroy, &c. saw Dr. Young, &c. " he said the people had better go home." It was an excellent advice, happy for some of them had they followed it; but it seems all advice was lost on these persons, they would hearken to none that was given them in Dock square, Royal-exchange lane or King street, they were bent on making this assault, and on their own destruction.

The next witness that knows any thing was James Bailey, he saw Carrol, Montgomery and White, he saw some round the sentry, heaving pieces of ice, large and hard enough to hurt any man, as big as your fist: one question is whether the sentinel was attacked or not. If you want evidence of an attack upon him there is enough of it, here is a witness, an inhabitant of the town, surely no friend to the soldiers, for he was engaged against them at the Ropewalks; he says he saw twenty or thirty round the sentry, pelting with cakes of ice as big as one's fist; certainly cakes of ice of this size may kill a man, if they happen to hit some part of the head. So that here was an attack on the sentinel, the consequence of

which he had reason to dread, and it was prudent in him to call for the main guard: he retreated as far as he could, he attempted to get into the Custom House, but could not; then he called to the guard, and he had a good right to call for their assistance; he did not know, he told the witness, what was the matter, but he was afraid there would be mischief by and by; and well he might, with so many shavers and geniuses round him capable of throwing such dangerous things. Bailey swears, Montgomery fired the first gun, and that he stood at the right, "the next man to me, I stood behind him, &c." This witness certainly is not prejudiced in favour of the soldiers, he swears he saw a man come up to Montgomery with a club, and knock him down before he fired, and that he not only fell himself, but his gun flew out of his hand, and as soon as he rose he took it up and fired. If he was knocked down on his station, had he not reason to think his life in danger, or did it not raise his passions and put him off his guard; so that it cannot be more than manslaughter?

When the multitude was shouting and huzzaing, and threatening life, the bells ringing, the mob whistling, screaming and rending like an Indian yell, the people from all quarters throwing every species of rubbish they could pick up in the street, and some who were quite on the other side of the street throwing clubs at the whole party, Montgomery in particular smote with a club and knocked down, and as soon as he could rise and take up his firelock, another club from afar struck his breast or shoulder, what could he do? Do you expect he should behave like a stoic philosopher lost in apathy? Patient as Epictatus while his master was breaking his legs with a cudgel? It is impossible you should find him guilty of murder. You must suppose him divested of all human passions, if you don't think him at the least provoked, thrown off his guard, and into the *furor brevis*, by such treatment as this.

Bailey "saw the Mulatto seven or eight minutes before the firing, at the head of twenty or thirty sailors in Cornhill, and he had a large cordwood stick." So that this Attucks, by this testimony of Bailey compared with that of Andrew and some others, appears to have undertaken to be the hero of the night; and to lead this army with banners, to form them in the first place in Dock square, and march them up to King-street with their clubs; they passed through the main street up to the main guard, in order to make the attack. If this was not an unlawful assembly, there never was one in the world. Attucks with his myrmidons comes round Jackson's corner, and down to the party by the sentry-box; when the soldiers pushed the people off, this man with his party cried, do not be afraid of them, they dare not fire, kill them! kill them! knock them over!—and he tried to knock their brains out. It is plain the soldiers did not leave their station, but cried to the people, stand off: now to have this reinforcement coming down under the command of a stout mulatto fellow, whose very looks was enough to terrify any person, what had not the soldiers then to fear? He had hardiness enough to fall in upon them, and with one hand took hold of a bayonet, and with the other knocked the man down: This was the behaviour of Attucks; to whose mad behaviour, in all probability, the dreadful carnage of that night is chiefly to be ascribed. And it is in this manner, this town has been often treated; a Carr from Ireland, and an Attucks from Framingham, happening to be here, shall sally out upon their thoughtless enterprizes, at the head of such a rabble of negroes, &c. as they can collect together, and then there are not wanting persons to ascribe all their doings to the good people of the town.

[Mr. Adams proceeded to a minute consideration of every witness produced on the Crown side ; and endeavoured to shew, from the evidence on that side, which could not be contested by the counsel for the Crown, that the assault upon the party was sufficiently dangerous to justify the prisoners ; at least, that it was sufficiently provoking to reduce to manslaughter the crime, even of the two who were supposed to be proved to have killed. But it would swell this publication too much, to insert his observations at large, and there is the less necessity for it, as they will probably occur to every man who reads the evidence with attention. He then proceeded to consider the testimonies of the witnesses for the prisoners, which must also be omitted : and concluded.]

I will enlarge no more on the evidence, but submit it to you. Facts are stubborn things ; and whatever may be our wishes, our inclinations, or the dictates of our passions, they cannot alter the state of facts and evidence : nor is the law less stable than the fact ; if an assault was made to endanger their lives, the law is clear, they had a right to kill in their own defence ; if it was not so severe as to endanger their lives, yet if they were assaulted at all, struck and abused by blows of any sort, by snow balls, oyster shells, cinders, clubs, or sticks of any kind ; this was a provocation, for which the law reduces the offence of killing, down to manslaughter, in consideration of those passions in our nature, which cannot be eradicated. To your candour and justice I submit the prisoners and their cause.

The law, in all vicissitudes of government, fluctuations of the passions, or flights of enthusiasm, will preserve a steady undeviating course ; it will not bend to the uncertain wishes, imaginations and wanton tempers of men. To use the words of a great and worthy man, a patriot, and an hero, an enlightned friend of mankind, and a martyr to liberty ; I mean *Algernoon Sidney*, who from his earliest infancy sought a tranquil retirement under the shadow of the tree of liberty, with his tongue, his pen, and his sword, "The law, (says he,) no passion can disturb. 'Tis void of desire and fear, lust and anger. 'Tis *mens sine affectu* ; written reason ; retaining some measure of the divine perfection. It does not enjoin that which pleases a weak, frail man, but without any regard to persons, commands that which is good and punishes evil in all, whether rich or poor, high or low.—'Tis deaf, inexorable, inflexible." On the one hand it is inexorable to the cries and lamentations of the prisoners ; on the other it is deaf, deaf as an adder to the clamours of the populace.

[*The cause was then closed by Robert Treat Paine, Esq. on the part of the crown : In his argument, he endeavoured to settle the principal facts, by comparing the evidence as well on the part of the Crown as of the prisoners ; and also to shew, that the many undeniable rules of law, which had been produced, did not apply to the cause at bar. And further, that even upon a supposition, the party had a right to go to the relief of the sentry, in the manner testified by the witnesses ; yet from their conduct in going down to the sentry, and behaviour while there, the law would consider them as an unlawful assembly. But as the person who wrote the trial in short hand, was so fatigued, that he could not take down what Mr. Paine said, we are not able to insert his argument in this publication.*]

Tuesday, half past five o'clock, P. M. (Mr. Paine not having gone through his argument) the court adjourned to Wednesday morning, eight o'clock.

Wednesday morning, eight o'clock, the court met according to adjournment, when Mr. Paine finished closing, and the court proceeded to sum up the cause to the Jury.

JUSTICE TROWBRIDGE.

Gentlemen of the Jury,

William Wemms, James Hartegan, William M'Cauley, Hugh White, Matthew Kilroy, William Warren, John Carrol, and Hugh Montgomery, prisoners at the bar, are charged by the Grand Jurors for the body of this county, with having feloniously and of their malice aforethought, shot and thereby killed and murdered Samuel Maverick, Samuel Gray, James Caldwell, Patrick Carr, and Crispus Attucks, against the peace, crown and dignity of our Sovereign Lord the King. Although it is laid in each indictment that some one of the prisoners in particular gave the mortal wound, yet as all the rest of them are charged with being present aiding and abetting him to do it, they are all charged as principals in the murder: and therefore, if upon consideration of the evidence given in this case, it should appear to you that all the prisoners gave the mortal wound, or that any one of them did it, and that the rest were present aiding and abetting him to do it, the indictment will be well maintained against all the prisoners, so far as respects the killing, because in such case, the stroke of one is, in consideration of law, the stroke of all. (*a*) And as the crime whereof the prisoners are accused is of such a nature as that it might have been committed by any one of them, though the indictments purport a joint charge, yet the law looks on the charge as several against each of the prisoners. (*b*) To this charge they have severally pleaded Not Guilty, and thereby thrown the burden of proof upon the Crown.

Considering how much time has already been taken up in this case, and the multiplicity of evidence that has been given in it, I shall not spend any time in recapitulating what each witness has testified, especially as your Foreman has taken it in writing from the mouths of the witnesses, but shall endeavour to point out the manner in which the various testimonies are to be considered, and how the evidence given is to be applied, still leaving it with you to determine how far that which has been testified by each witness is to be believed. But before I do this it may not be improper, considering what has in the course of this year been advanced, published, and industriously propagated among the people, to observe to you that none of the indictments against the prisoners are founded on the act of this province, or the law given to the Jews, but that all of them are indictments at common law. The prisoners are charged with having offended against the common law, and that only; by that law therefore they are to be judged, and by that law condemned, or else they must be acquitted. This seems to make it highly proper for me to say something to you upon the common law, upon homicide and the several kinds and degrees of it, and the rules for trial of homicide as settled and established by the common law. The laws of England are of two kinds, the unwritten or common law, and the written or statute law. The general customs or immemorial usage of the English nation, is properly the common law. And the evidence thereof are the records of the several courts of justice, the books of reports and judicial decisions, and the treatises of the sages of the law, handed down to us from the times of the highest antiquity.(*c*) The common law is the law by which the proceedings and determinations in the King's ordinary courts of justice, are guided and directed; this law is the birth right of every Englishman; the first settlers of this country brought it from England with them; it was in force here when the act of this province against murder was made. (*d*) Murder here was

(*a*) 1 *Hale*, 437, 463. 2 *Hale*, 344, 345. *Foster*, 351. *Salk*, 334, 5.
(*b*) 2 *Haw.* 25. § 89. (*c*) 1 *Black*, 63, 64. (*d*) *Pro. Act.* 9 *W.* 3.

then felony by common law, and excluded clergy by 23 H. 8. c. i. and 1. Edw. 6. c. xii. So that, that province act created no *new* felony; it was in affirmance of the common law; if murder by that act had been made a new felony, a murderer would now be intituled to the benefit of clergy by force of 25. E. 3. c. iv. because it is not taken away by that province act or any other made since. (*e*) Homicide is of three kinds; justifiable, excusable, and felonious; the first has no share of guilt at all; the second very little; but the third is the highest crime against the law of nature. (*f*) There are also degrees of guilt in felonious homicide, which divide the offence into manslaughter and murder. (*g*) I shall give some instances under each head, proper to be considered in this case, *and known at this day*. And first of justifiable homicide: Killing him who attempts to rob or murder me, to break open my dwelling-house in the night, or to burn it, or by force to commit any other felony on me, my wife, child, servant, friend, or even a stranger, if it cannot be otherwise prevented, is justifiable. (*h*) By common law it was, and still is, the duty of peace officers, such as justices of the peace, sheriffs, under-sheriffs, and constables, to suppress riots, routs, and unlawful assemblies. The Stat. 13. H. 4. c. viii. subjected justices of the peace, sheriffs, and under-sheriffs, to the penalty of £100, if they neglected their duty therein. And as the common law obliges the peace officers to suppress riots, &c. so it empowers them to raise a sufficient force to enable them to do it. A justice of the peace, sheriff or under-sheriff may raise the power of the county, and the constable of a town, the people of that town, to aid and assist him in suppressing a riot and apprehending the rioters, and if they stand in their defence, resist the officer, and continue their riotous proceeding in pulling down a house, assaulting and beating, or abusing any person or persons, such rioters may lawfully be killed, if they cannot otherwise be prevented. (*i*) It is the duty of all persons (except women, decrepid persons, and infants under fifteen) to aid and assist the peace officers to suppress riots, &c. when called upon to do it. They may take with them such weapons as are necessary to enable them effectually to do it, and may justify the beating, wounding, and even killing, such rioters as resist, or refuse to surrender, if the riot cannot otherwise be suppressed, or the rioters apprehended. (*k*) So in case of a sudden affray, if a private person interposing to part the combatants, and giving notice of his friendly design, is assaulted by them, or either of them, and in the struggle happens to kill, he may justify it, because it is the duty of every man to interpose in such cases to preserve the public peace. (*l*) *A fortiori* private persons may interpose to suppress a riot. (*m*)

Homicide excusable in self defence is where one engaged in a sudden affray, quits the combat before a mortal wound is given, retreats as far as he safely can, and then urged by mere necessity, kills his adversary in the defence of his own life. (*n*) This differs from justifiable self defence, because he was to blame for engaging in the affray, and therefore must retreat as far as he can safely; whereas in the other case aforementioned neither the peace officers, nor his assistants, nor the private person is obliged to retreat, but may stand and repel force by force. (*o*)

(*e*) 2 *Haw.* 33. § 24. 2 *Hale*, 330, 334, 335. (*f*) 4 *Black.* 177, 8. (*g*) 4 *Black.* 190. (*h*) 24 *H.* 8, c. 5. 1 *Hale*, 488. 4 *Black.* 180. *Foster*, 273. 4. (*i*) 1 *Haw.* 28, § 14. 65, § 11. 1 *Hale*, 53, 293, 4, 495, 596. 4 *Black.* 147. (*k*) 1 *Haw.* 63, § 10. 65, § 20, 21 4 *Black.* 147, 179, 180 (*l*) *Foster*, 272. 1 *Haw.* 63, § 11, 13. (*m*) *Kely.* 76. 1 *Haw.* 65, § 11 (*n*) 1 *Hale*, 479. *Foster*, 277. (*o*) *Foster*, 273.

Manslaughter is the unlawful killing another without malice express or implied: As voluntarily upon a sudden heat, or involuntarily in doing an unlawful act. (*p*) Manslaughter on a sudden provocation, differs from excusable homicide in self-defence, in this; that in one case there is an apparent necessity for self preservation to kill the aggressor, in the other there is no necessity at all, it being a sudden act of revenge. (*q*) As where one is taken in the act of adultery, and instantly killed by the husband, in the first transport of passion. (*r*) So if one, on angry words assaults another by wringing his nose, and he thereupon *immediately* draws his sword and kills the assailant it is but manslaughter, because the peace is broken with an indignity to him that received the assault, and he being so affronted, might reasonably apprehend the other had some further design on him. (*s*) Where one happens to kill another in a contention for the wall, it is but manslaughter. (*t*) So where H and A came into Buckner's lodging, A takes down a sword in the scabbard that hung there, stood at the chamber door with the sword undrawn, to prevent Buckner from going out before they could bring a bailiff to arrest him for a debt he owed H; and upon some discourse between Buckner and H, Buckner takes a dagger out of his pocket, stabs and kills H with it. This was adjudged only manslaughter at common law, and not to come within the statute of I. Ja. 1. against stabbing, because Buckner was unlawfully imprisoned. (*u*) So where an officer abruptly and violently pushed into a gentleman's chamber, early in the morning to arrest him, without telling him his business, or using words of arrest, and the gentleman not knowing him to be an officer, in his first surprise, *took down a sword and stabbed him.* This also was ruled to be but manslaughter at common law, because the gentleman might reasonably conclude from the officer's behaviour, that he came to rob or murder him. (*v*) So where Marshall and some other bailiffs, came to Cook's dwelling house about eight o'clock in the morning, called upon him to open his doors and let them enter, because they had a warrant, on such and such writs, at the suit of such persons, to arrest him, and required him to obey them, but he told them they should not enter, and bid them depart, and thereupon they broke a window, and then came to the door of the house, and in attempting to force it open, broke one of the hinges, whereupon Cook shot Marshall and killed him; it was adjudged not to be murder, because though Marshall was an officer, yet he was not in the due execution of his office, but was doing an unlawful act in attempting to break open the house to execute such a civil process; and every one has a right to defend his house in such cases; but to be manslaughter, because Cook saw Marshall, knew him, shot and killed him voluntarily, when he might have resisted him without killing him. (*w*) Though no words of reproach, nor actions, or gestures expressive of reproach or contempt, without an assault, will by common law free the party killing from the guilt of murder, (*x*) yet words, of menace of bodily harm, may amount to such a provocation, as to make the offence to be but manslaughter. (*y*)

If these determinations appear new and extraordinary to you, it is not to be wondered at, considering the doctrines that of late have been advanced and propagated among you. In the course of this year you doubtless have heard much of the law given to the Jews, respecting homicide;

(*p*) 4 *Black.* 191. (*q*) 4 *Black.* 192. (*r*) *Kely.* 137. *Ray.* 212. *Foster*, 298. (*s*) *Kely.* 135. (*t*) 1 *Haw.* 31, § 36. 1 *Hale*, 455, 6. (*u*) *Style's* 467. (*v*.) *Foster*, 298, 9. 1 *Hale*, 370. *Kely.* 136. (*w*) *Cro. Car.* 537, 8. *Cook's Case.* (*x*) *Foster*, 290. (*y*) 1 *Hale* 456.

as well as of the precept given to Noah, that, "Whoso sheddeth man's blood, by man shall his blood be shed." Whence it has been inferred, that whoever *voluntarily* kills another, whatever the inducement, or provocation may be, is a *murderer*, and as such ought to be put to death. But surely not only the avenger of blood, and he who killed a thief breaking up an house in the night, were exceptions to that general precept, but also he who killed another in his own defence. Even the Jewish Doctors allowed this, (z) and that justly; because the right of self-defence is founded in the law of nature. The Jews indeed, supposed their law equally subjected to death, him who killed another, whether of malice aforethought, or on a sudden falling out: but it seems the early christian divines did not, for the clergy in the reign of Canute, the beginning of the eleventh century, so construed the Mosaical law as to deem him a murderer, who in time past had conceived hatred against his neighbour and lain in wait for him and killed him, and him guilty of manslaughter only who killed another on sudden provocation; and it is ordained by one of the laws of this Canute, that if any person shall with premeditation kill another he shall be openly delivered up to the kindred of the slain, but if the killing be not with premeditation the bishop shall take cognizance of it. (a) And as homicides have since happened, and been tried in the King's Courts, the Judges have from time to time, determined them to be either justifiable, excusable, or felonious: and if felonious, to be murder or manslaughter, according to the particular circumstances that attended the killing.

These determinations of the King's Courts, for so many ages past, shew, not only what the common law in cases of this kind is, but that these rules of the common law are the result of the wisdom and experience of many ages.—However it is not material in the present case, whether the common law is agreeable to, or variant from the law given to the Jews, because it is certain, the prisoners are not in this Court to be tried by *that* law, but by the common law, that is according to the settled and established rules, and antient customs of the nation, approved for successions of ages.

Murder, by the common law, is the unlawful killing a reasonable creature, under the king's peace, of malice aforethought, by a person of sound mind and discretion. (b) Malice is the grand criterion that distinguishes murder from all other homicide. Malice aforethought, is not confined to an old grudge, or fixed, settled anger against a particular person, but it extends to a disposition to do evil. (c) It is the dictate of a wicked, depraved, and malignant spirit. (d) As when one with a sedate, deliberate mind, and formed design kills another. (e) Not where the killing is owing to a sudden transport of passion, occasioned by any considerable provocation. For the law pays such regard to human frailty, as not to put an hasty act and a deliberate one upon the same footing with regard to guilt. (f) In the case of duelling, when two, upon a sudden quarrel, instantly draw their swords and fight, and one kills the other, it is manslaughter; but if on such a quarrel in the morning, they agree to fight in the afternoon, or so long after as that there is sufficient time for the blood to cool, the passions to subside, and reason to interpose, and they meet and fight accordingly, if one kills the other, it is murder. (g) So if a man resolves to kill the next man he meets, and does it, it is murder,

(z) 1 *Hale*, 4. (a) *Ca. Eq.* 270, 1. (b) *Inst.* 47. 4 *Black.* 195. (c) 4 *Black.* 199. (d) *Fost.* 256. (e) 4 *Black.* 199. (f) 4 *Black.* 191. (g) 1 *Hawk.* 31. § 1 29. *Keyl.* 27. 130. *Fost.* 296. *Ld. Raym.* 1494, 5.

although he knew him not, for this shews the malignity of his heart, and his universal malice. (*h*) So where one maliciously strikes or shoots at another, but misses him and kills a third person, whom he did not intend to hurt, it is nevertheless murder, because he is answerable for all the consequences of his malicious act; (*i*) but if the blow intended against A, and lighting on B, arose from a sudden transport of passion, which in case A had died by it, would have reduced the offence to manslaughter, the fact will admit of the same alleviation if B should happen to fall by it. (*k*) If two or more come together to do an unlawful act against the king's peace, of which the probable consequence might be bloodshed, as to beat a man or commit a riot, and in the prosecution of that design, one of them kills a man, it is murder in them all. (*l*) So where one kills another wilfully without a considerable provocation, it is murder, because no one unless of an abandoned heart, would be guilty of such an act upon a slight or no apparent cause. (*m*) So if one kills an officer of justice, either civil or criminal, in the execution of his duty, or any of his assistants endeavouring to conserve the peace, or any private person endeavouring to suppress an affray, or apprehend a felon, knowing his authority, or the intention with which he interposes, it is murder. (*n*) As to the rules settled and established by common law, for the trial of homicide, it is observable, that no person can by common law, be held to answer for any kind of homicide, at the suit of the king only, unless he be first accused thereof by a jury of the county where the fact was done; (*o*) that he who is so accused, may on the plea of not guilty, not only put the counsel for the king upon the proof of the fact, but when it is proved, may give any special matter in evidence to justify or excuse it, or to alleviate the offence; (*p*) that the facts are to be settled by another jury of the same county, (*q*) who are supposed to be best knowing of the witnesses and their credibility, and their verdict must be founded on the evidence given them in Court; (*r*) that if any of the jurors are knowing of the facts, they ought to inform the Court of it, be sworn as witnesses, and give their testimonies in Court, to the end it may be legal evidence to their fellows, and the Court may know on what evidence the jury's verdict is founded; (*s*) that the Court are to determine the law arising on the facts, because they are supposed to know it; [*t*] that the jury, under the direction of the Court in point of law, matters of fact being still left to them, may give a general verdict conformable to such direction; but in cases of doubt, and real difficulty, the jury ought to state the facts and circumstances in a special verdict, that the Court upon farther consideration thereof, may determine what the law is thereon; [*u*] that although malice is to be collected from all circumstances, yet the Court, and not the jury, are the proper judges thereof; as also, if the quarrel was sudden, whether there was time for the passions to cool, or whether the act was deliberate or not. [*w*] The judge ought to recommend to the jury to find the facts specially, or direct them hypothetically, as, if you believe such and such witnesses, who have sworn so and so, the killing was malicious, and then you ought to find the prisoners guilty of murder; but if you do not be-

(*h*) 4 *Black.* 200. (*i*) 1 *Hale.* 442. *Fost.* 261. 2. (*k*) *Fost.* 262. (*l*) 1 *Haw.* 31, § 46. 4 *Black.* 200. (*m*) 4 *Black.* 200. (*n*) 1 *Hale.* 457. *Fost.* 270, 308. 1 *Hawk.* 31. § 44. 4 *Black.* 200, 1. (*o*) 4 *Black* 343, 300, 1. (*p*) 4 *Black.* 332, 3, 1 *Inst.* 283. (*q*) 2 *Hawk.* 40. § 1. 4 *Black.* 301. (*r*) 1 *Hale*, 635. *Fortescue de Laud. Leg. Ang.* c. 28. (*s*) 3 *Black.* 374, 5. (*t*) 2 *Hawk.* 22. § 21. *Ld. Raym.* 1494. *Fost.* 255, 6. 280. (*u*) *Fost.* 255, 6. (*w*) *Fost.* 267. *Ld. Raym.* 1493, 4. 5.

lieve these witnesses, then you ought to find them guilty of manslaughter only. And according to the nature of the case, if you on the evidence given, believe the facts to be so, then the act was deliberate, or if you believe them to be so, then it was not deliberate, and according as you believe, so you ought to find one or the other [x]

To what has been said under this head I must add, that in the trial of this case, both the Court and Jury are as much obliged to observe these rules, as a Court and Jury in England would be in the trial of a like case there; the law in these respects is the same here as there. A Juror's oath in this case is also the same here as there.(y) Therefore as by law you are to settle the facts in this case upon the evidence given you *in Court*, you must be sensible, that in doing it you ought not to have any manner of regard to what you have read or heard of the case *out of Court*. And as it is the proper business of the Court, to determine the law arising upon the facts, you must also be sensible, that you are to take the law from the Court, and not collect it from what has been said by people out of Court, or published in the news-papers, or delivered from the pulpits.

Having premised these things, I shall observe to you the several questions that arise in this case, and point out to you the manner in which I think they may be best considered and determined.

The principal questions are these, viz:

I. Whether the five persons said to be murdered, were in fact killed? And if so,

II. Whether they, or either of them were killed by the prisoners, or either of them? And if they were, then

III. Whether such killing was justifiable, excusable or felonious? And if the latter,

IV. Whether it was manslaughter or murder?

As to the first, you have not only the coroner's inquest, but the testimony of so many witnesses, that the five persons were shot and thereby mortally wounded in the night of the fifth of March last, and that some of them died instantly, and the rest in a few days after, that you doubtless will be satisfied they were all killed. And the same evidence must, I think, also convince you that they were all killed by the party of soldiers that were at the custom house that night, or by some of them.

Whether the prisoners were there, will therefore be your next inquiry; for if either of them was not, he must be acquitted. You have the testimony of Bridgham and Simpson as to Wemms; of Danbrocke and Simpson as to Hartegan; of Austin as to M'Cauley; of Simpson, Langford, Bailey and Clark as to White; of Archibald, Langford and Brewer as to Killroy; of Dodge and Simpson as to Warren; and of Bailey, Bass, Palmes, Danbrook and Wilkinson as to Montgomery's being at the custom house that night, and of the party of soldiers that was there; and this is not contested with any opposite proof.—The law doth not in this case make the testimony of two witnesses necessary for the Jury to settle a fact upon; if one swears it, and upon his testimony you believe it, that is sufficient evidence for you to find the fact. But if you are satisfied upon the evidence, that all the prisoners were there, yet as each prisoner is severally charged with having killed these five persons, and by his plea has denied the charge, you must be fully satisfied upon the evidence given you, with regard to each prisoner, that he in particular, did *in fact*, or *in consideration of law* kill one or more of these persons that were slain, or he must be acquitted.

(x) *Fost.* 256. *Id. Raym.* 1494. *Vaugh.* 144. (y) 2 *Hale*, 293.

The way therefore to determine this, will be for you to name some one of the prisoners, and then consider whether it appears upon the evidence in the case, that he did *in fact* kill Maverick? And then, whether upon the evidence it appears, he *in fact* killed Gray? And so inquire in the same manner, whether he did *in fact* kill either of the other three persons? And having noted how it appears upon the evidence with regard to him, you must then proceed in like manner with each of the other prisoners; and if upon a full consideration of the evidence in the case, you should be in doubt, as to any one of the prisoners having *in fact* killed either of the persons that were slain, you must consider whether he did it *in consideration of law?* Now all that are present, aiding and abetting one person in killing another, do, in judgment of law, kill him. The stroke of one is, in consideration of law, the stroke of all. When a number of persons assemble together to do an unlawful act, and in the prosecution of that design one of them kills a man, all the rest of the company are in law considered as abetting him to do it. (*a*)

You must therefore inquire howand for what purpose the prisoners came together at the Custom House, and what they did there before these persons were killed?

The counsel for the prisoners say, that if they were at the Custom House that night, they went there by order of the Captain of the main guard, to support and protect the sentry, who was insulted, assaulted and abused by a considerable number of people assembled for that purpose; but as this is denied by the counsel for the Crown, it will be proper to consider whether a sentry was duly placed at the Custom House? And if so, whether he was attacked? And if so, whether the prisoners went by order of the Captain to support and protect him?

That a sentry was in fact then placed at the Custom House, by order of Colonel Dalrymple, the commanding officer, as also that one had been placed there for a long time before, is testified by Captains O'Hara, and Mason, and indeed the right to place sentries, it being in time of peace, is the only thing that has been questioned. Upon this, therefore I would observe, that as the main design of society is the protection of individuals by the united strength of the whole community; so for the sake of unanimity, strength and dispatch, the supreme executive power is by the British constitution vested in a single person, the King or Queen. This single person has sole power of raising fleets or armies; and the statute of 13. Car. 2. c. 6. declares, That within all his Majesty's realms and dominions, the sole supreme government, command and disposition of the militia, and of all forces by sea and land, and all forts and places of strength is, and by the law of England ever was, the undoubted right of his Majesty and his royal Predecessors, Kings and Queens of England, and as Charles the Second had this right as King of England, it of course comes to his successors, and our present Sovereign Lord the King now hath it.

Indeed the Bill of Rights declares among other things, That the raising or keeping a standing army within the kingdom in a time of peace, unless with the consent of Parliament, is against law. And it is said, that upon the same principles whereon that declaration was founded, it is alike unlawful to be done in any other part of the King's dominions. But be that as it may, the Mutiny Acts annually made, shew the consent of Parliament, that the King in time of peace should keep up a standing army not only in the Kingdom but in America also. They not only ascertain

(*a*) 1 *Hale.* 440, 1. *Fost.* 351.

the number of troops that shall be kept up, but provide for the regulation of such of the King's troops as are in America. And therefore as by these acts the King is empowered to keep up these troops, and he, by common law, has the command and disposition of all forces by sea and land within his dominions, and is the principal conservator of the peace, he doubtless, well might send such part of those troops to this part of his dominions, in order to restore the public peace, or to aid and assist the civil magistrate in preserving of it, as he judged necessary for the purpose; and if you should think there was no occasion for sending any troops here, for either of those purposes that will not alter the case because the King, being the proper judge in that matter, the validity of his order will not depend upon the truth of the representations whereon it is founded. The acts not only fix the number of troops to be kept up, but also establish a law martial for their government. Among other things, the Acts subject every officer or soldier that sleeps on his post, or leaves it before he is relieved, or disobeys the lawful command of his superior officer, to such punishment as a Court Martial shall inflict, though it extend to death itself. These troops are and ever since they came here have been under this martial law and subject to as strict regulation, as in time of war.—Placing sentries is a necessary part of the regulation of an army, accordingly a sentry hath in fact been kept at the Custom house ever since the troops have been here; and it is sworn by the Captains O'Hara and Mason that it was done by order of the commanding officer. If so, you have no reason to doubt but that it was legally done.

Your next inquiry then will be, whether the sentry so placed at the Custom house was attacked? Many witnesses have sworn that he was.—But the counsel for the Crown say, the contrary appears by the testimony of Col. Marshal and others.

It is with you to determine this matter upon the whole of the evidence given you. In doing it you ought to reconcile the several testimonies, if by any reasonable construction of the words it may be done. Where some witnesses swear they saw such a thing done, and others swear they were present and did not see it: if the thing said to be done be such as it may reasonably be supposed some might see and others not, by reason of their want of observation, or particular attention to other matters there, as both may be true, you ought to suppose them to be so, rather than presume that any of the witnesses swear falsely. But if witnesses contradict each other, so that their testimonies cannot be reconciled, you must then consider the number of the witnesses on each side, their ability, integrity, indifference as to the point in question, and the probability or improbability arising from the nature of the thing in question, and upon the whole settle the fact as you verily believe it to be. If you find the sentry was attacked, the next thing to be considered is whether the prisoners went to protect him, and if so whether it was lawful for them so to do. There is a great difference between a common affray, and attacking the King's forces. I think the law in that regard ought to be more generally known here than it seems to be. If upon a sudden quarrel from some affront given or taken, the neighbourhood rise and drive the King's forces out of their quarters, it is a great misdemeanor, and if death ensues it may be felony in the assailants, but it is not treason, because *there was no intention against the King's person or government:* But attacking the King's forces *in opposition to his authority*, upon a march or in quarters, is levying war against the King.*(b)* And resisting the King's forces, *if sent to keep the peace, may* amount to an overtact of high treason.*(c)* Though it may be

(*b*) *Foster*, 219. (*c*) 4 *Black.* 147.

attended with great inconveniences for private persons, without a peace officer, to make use of arms for suppressing an ordinary riot, yet if the riot be such an one as savours of rebellion, it doubtless may lawfully be done.*(d)* You have heard what the witnesses deposed respecting the resolution taken to drive the soldiers out of town, "*because they had no business here.*" You have also heard what has been testified of the proposals to *attack* the main guard—of the assembling of the people especially in Dock square, of the huzzaing for the main guard and King street—and of the attacking the sentry. Now if this was done in pursuance of a resolution taken "to drive the soldiers out of the town *because they had no business here.*" I will not now determine whether it was treason or not; but it certainly was a riot that savoured of rebellion: for the suppressing whereof, private persons might not only *arm* themselves, but make use of their arms, if they could not otherwise suppress it.*(e)* Much more might the Captain of the main guard take part of the guard, armed as usual, and go with them to protect the sentry. By what Cruckshanks, Benjamin Davis, Whitington and others have sworn, it seems the sentry not only called to the main guard for assistance, but two men went and told them they must send assistance directly or the sentry would be murdered. Whereupon the Captain gave orders that a party should go to the assistance of the sentry, and they were drawn out accordingly, led down to the Custom house by a corporal, and followed by the captain. Now as this party did not assemble or go there of their own accord, but were sent by their captain to protect the sentry, it must be supposed *that* was their design in going until the contrary appears And although upon the evidence you should not be satisfied that the sentry was attacked in pursuance of a resolution taken *to drive the soldiers out of town, because they had no business here,* yet considering the notice given by the two men to the captain, of the danger the sentry was in, and what the captain himself might then see and observe of the attack upon the sentry, (if any regard is to be had to what a great number of the witnesses have sworn) he well might order out such a party, and go with them to protect the sentry: And it seems to be agreed that if the prisoners were at the Custom house that night, all of them, except the sentry, were of that party. It has been said that this party of soldiers, when on their march, pushed Fosdick with a bayonet while he was standing peaceably in the street, and struck Brewer as soon as they got to the Custom house, which shewed their design was to disturb the peace and not to preserve it. But as Fosdick himself says, that, upon his refusing to move out of his place, they parted and went by him, you will consider whether it is not more reasonable to suppose, that what he calls a push was an accidental touch owing to the numbers in the street, rather than any thing purposely done to hurt him; and so with regard to the blow said to be given to Brewer. But supposing the push purposely given by one of the party, and the blow by him or another of them, it will by no means be sufficient to prove a design in the whole party, to disturb the peace, nor will all of them be involved in the guilt of one or more of them that broke the peace, unless they actually aided or abetted him or them that did it; because they were assembled and sent forth for a different purpose and a lawful one.*(f)* But if they were a lawful assembly when they got to the Custom house, yet if afterwards they all agreed to do an unlawful act to the disturbance of the peace, and in prosecution of that design Maverick and the rest were killed, all that party will by law be chargeable with each mortal stroke given by either of them, as though they all had in fact given it.

(*d*) 1 *Hawk.* 65. § 11. (*e*) *Ibid.* (*f*) *Fost.* 354. 2 *Hawk.* 29. § 9

And it is said, that while they were at the Custom-house, before they fired, some of them attempted with their bayonets to stab every one they could come at without any reason at all for so doing. Such conduct to be sure can neither be justified nor excused. But as the time was so very short and some of the witnesses declare the people were crowding upon the soldiers and that they were moving their guns backwards and forwards crying stand off, stand off, without moving from their station, you will consider whether this may not be what other witnesses call an attempt to stab the people. But, be that as it may, if the party was a lawful assembly before this not being the act of the whole would not make it unlawful. The counsel for the Crown insist, that the firing upon the people was an unlawful act, in disturbance of the peace, and as the party fired so near together it must be supposed they previously agreed to do it; that agreement made them an unlawful assembly if they were not so before and being so when they fired, all are chargeable with the killing by any one or more of them. However just this reasoning may be, where there is no apparent cause for their firing, yet it will not hold good where there is. If each of the party had been at the same instant so assaulted as that it would have justified his killing the assailant in defence of his own life, and thereupon each of them had at that same instant fired upon and killed the person that assaulted him, surely it would not have been evidence of a previous agreement to fire, or prove them to be an unlawful assembly; nor would it have been evidence of such agreement if the attack was not such as would justify the firing and killing, though it was such an assault as would alleviate the offence and reduce it to manslaughter, since there would be *as apparent* a cause of the firing in one case as in the other, and though not *so good* a cause, yet such an one as the law in condescension to human frailty greatly regards. You will therefore carefully consider what the several witnesses have sworn with regard to the assault made upon the party of soldiers at the Custom house, and if you thereupon believe they were before and at the time of their firing attacked by such numbers, and in such a violent manner as may of the witnesses have positively sworn you will be able to assign a cause for their firing so near together as they did without supposing a previous agreement so to do. But it is said that if their firing as they did, don't prove a previous agreement to do it yet it is good evidence of an actual abetment to fire, as one by firing encourages the others to do the like. As neither of the soldiers fired more than once, it is evident that he who fired last could not thereby in fact abet or encourage the firing of any of those who fired before him and so it cannot be evidence of such abetment. And if he who fired first and killed, can justify it, because it was lawful for him so to do, surely that same lawful act cannot be evidence of an unlawful abetment. And though he who first fired and killed may not be able to justify the doing it, yet if it appears he had such a cause for the killing as will reduce it to manslaughter, it would be strange indeed if that same act should be evidence of his abetting another who killed without provocation, so as to make him who fired first guilty of murder. The same may be said as to all the intermediate firings: and as the evidence stands I don't think it necessary to say how it would be in case the first person fired with little or no provocation. If therefore this party of soldiers when at the Custom House were a lawful assembly and continued so until they fired, and their firing was not an actual *unlawful* abetment of each other to fire, nor evidence of it, they cannot be said to have *in consideration of law* killed those five persons or either of them, but it must rest on the evidence of the actual killing: and if so neither of the prisoners can be found guilty thereof, unless it appears not only

that he was of the party, but that he in particular *in fact* did kill one or more of the persons slain. That the five persons were killed by the party of soldiers or some of them seems clear upon the evidence and indeed is not disputed.

Some witnesses have been produced to prove that Montgomery killed Attucks; and Langford swears Killroy killed Gray, but none of the witnesses undertake to say that either of the other prisoners in particular killed either of the other three persons, or that all of them did it. On the contrary it seems that one of the six did not fire, and that another of them fired at a boy as he was running down the street, but missed him (if he had killed him, as the evidence stands, it would have been murder) but the witnesses are not agreed as to the person who fired at the boy, or as to him who did not fire at all. It is highly probable from the places where the five persons killed fell and their wounds, that they were killed by the discharge of five several guns only. If you are upon the evidence satisfied of that, and also that Montgomery killed Attucks, and Killroy, Gray, it will thence follow that the other three, were killed, not by the other six prisoners, but by three of them only; and therefore they cannot all be found guilty of it. And as the evidence does not shew which three killed the three, nor that either of the six in particular killed either of the three, you cannot find either of the six guilty of killing them or either them. *(g)* If you are satisfied, upon the evidence given you, that Montgomery killed Attucks, you will proceed to inquire whether it was justifiable, excusable, or felonious homicide, and if the latter whether it was maliciously done or not. As he is charged with murder, if the fact of killing be proved, all the circumstances of *necessity* or *infirmity* are to be satisfactorily proved by him, unless they arise out of the evidence produced against him, for the law presumeth the fact to have been founded in malice until the contrary appears. *(h)*

You will therefore, carefully consider and weigh the whole of the evidence given you respecting the attack, made upon the party of soldiers *in general*, and upon Montgomery in particular. In doing it, you will observe the rules I have before mentioned, and not forget the part that some of the witnesses took in this unhappy affair, and if upon the whole it appears to you that Montgomery was attacked in such a violent manner as that his life was in immediate danger, or that he had sufficient reason to think it was and he thereupon fired and killed Attucks for the preservation of his own life it was justifiable homicide, and he ought to be acquitted. If you do not believe that was the case but upon the evidence are satisfied, that he was by that assembly, assaulted with clubs and other weapons, and thereupon fired at the rioters and killed Attucks: then you ought to find him guilty of manslaughter only. But if upon the evidence you believe that Montgomery without being previously assaulted, fired, and killed Attucks: then you will find him guilty of murder. But you must know that if this party of soldiers *in general* were pelted with snowballs, pieces of ice and sticks, *in anger*, this without more amounts to an assault, not only upon those that were in fact struck but upon the whole party; and is such an assault as will reduce the killing to manslaughter. And if you believe, what some of the witnesses have sworn, that the people around the soldiers and many of them armed with clubs crowded upon the soldiers, and with the cry of, "Rush on, Kill them, kill them, knock them over," did in fact rush on, strike at them with their clubs, and give Montgomery such a blow, as to knock him down, as some of the witnesses say, or to make him sally, or stagger, as others say, it will be

(*g*) 1 *Hale*, 442. (*h*) *Foster*, 255.

sufficient to show, that his life was in immediate danger, or that he had sufficient reason to think so.

It seems a doctrine has of late been advanced, "that soldiers while on duty may upon *no occasion whatever* fire upon their fellow subjects, without the order of a civil magistrate." This may possibly account for some of those who attacked the soldiers, saying to them, "You dare not fire, we know you dare not fire." But it ought to be known that the law doth not countenance such an absurd doctrine. A man by becoming a soldier doth not thereby lose the right of self defence which is founded in the law of nature. Where any one is, without his own default, reduced to such circumstances as that the laws of society cannot avail him, the law considers him "as *still in that instance* under the protection of the law of nature." (*i*) This rule extends to soldiers as well as others; nay, while soldiers are in the immediate service of the King, and the regular discharge of their duty, they rather come within the *reason* of civil officers and their assistants, and so are alike under the *peculiar* protection of the law.

If you are satisfied upon the evidence, that Killroy killed Gray, you will then inquire, whether it was justifiable, excusable or felonious homicide, and if the latter, whether it was with or without malice. If the attack was upon the party of soldiers *in general*, and in the manner I have just mentioned, as some of the witnesses say it was, it is equally an assault upon all, whether all were in fact struck, or not, and makes no material difference, as to their respective right of firing: for a man is not obliged to wait until he is killed, or struck, before he makes use of the necessary means of self defence. If the blows with clubs were, by an enraged multitude, aimed at the party *in general*, each one might reasonably think his own life in danger; for though he escaped the first blow, he might reasonably expect more would follow, and could have no assurance that he should be so fortunate as to escape all of them.

And therefore, I do not see but that Killroy is upon the same footing with Montgomery; and your verdict must be the same as to both, unless what Hemmingway swears Killroy said, or the affray at the Rope-walks, or both, materially vary the case. Hemmingway swears, that he and Killroy were talking about the town's people and the soldiers, and that Killroy said, "He never would miss an opportunity, when he had one, to fire on the inhabitants, and that he had wanted to have an opportunity, ever since he landed." But he says, he cannot remember what words immediately preceded or followed, or at what particular time the words were uttered, nor does he know whether Killroy was jocular or not. If the witness is not mistaken as to the words, the speech was, at least, very imprudent and foolish. However, if Killroy, either in jest or in earnest, uttered those words, yet if the assault upon him was such, as would justify his firing and killing, or alleviate it so as to make it but manslaughter, that will not enhance the killing to murder. And though it has been sworn that Killroy and other soldiers, had a quarrel with Gray and others, at the Rope-walks, a few days before the 5th of March, yet it is not certain that Killroy then knew Gray, or aimed at him in particular: But if Gray encouraged the assault by clapping the assailants on their backs, as Hinkley swears he did, and Killroy saw this and knew him to be one of those that were concerned in the affray at the Rope-walks, this very circumstance would have a natural tendency, to raise Killroy's passions, and throw him off his guard, much more than if the same things had been done by another person. In the tumult of passion the voice of reason is

(*i*) *Foster*, 274, 5.

not heard, and it is owing to the allowance the law makes for human frailty, that all unlawful voluntary homicide is not deemed murder. If there be "malice between A and B, and they meet casually, A assaults B, and drives him to the wall, B in his own defence kills A, this is *se defendendo*, and shall not be heightened by the former malice, into murder or homicide at large, for it was not a killing upon the account of the former malice, but upon a necessity imposed upon him by the assault of A." (*k*) So upon the same principle where the assault is such as would make the killing but manslaughter, if there had been no previous quarrel, the killing ought to be attributed to the assault, unless the evidence clearly shews the contrary: an *assault* being known and allowed by law so be *a provocation* to kill, that will free the party from the guilt of murder; whereas neither words of reproach, nor actions expressive of contempt, "are *a provocation* to use such violence," (*l*) that is, the law doth not allow them to be, *without an assault*, such *a provocation* as will excuse the killing, or make it any thing less than murder. Upon the same principle, where the assault is such, as makes the killing manslaughter, the killing ought to be attributed to the assault, unless the evidence clearly shews the contrary.

This meeting of Killroy and Gray was casual upon the part of Killroy at least; he was lawfully ordered to the place where he *was* and had no right to quit his station without the leave of Capt. Preston, nor were any of the party obliged to retreat and give way to the rioters, but might lawfully stand and repel force by force.

It is needless for me to say what you ought to do with regard to the other six prisoners, in case they had gone to the Custom House, not to protect the sentry but to disturb the peace, or after they got there and before the firing had agreed so to do; or in case they had *actually* unlawfully abetted the killing: because none of these things have been testified, nor can any of them be deduced from any thing which has been given to you in evidence.

Having already said much more upon this occasion, than I should have thought necessary in a like case, at any other time, I shall add no more.

JUSTICE OLIVER.

Gentlemen of the Jury,

THIS is the most solemn trial I ever sat in judgment upon. It is of great importance to the community in general, and of the last importance to the prisoners at the bar. I have noticed your patience and attention during the course of the trial, which have been highly commendable and seem to have been adequate to the importance of the cause.

The occasion of this trial is the loss of *five* of our fellow-subjects, who were killed on the evening of the 5th of March last: whether the prisoners at the bar are chargeable with their death or not, it is nevertheless our part to adore the divine conduct of this unhappy catastrophe, and justify the ways of GOD to Man.

Here are *eight* prisoners at the bar who are charged with the murder of those *five* persons, and whose lives or deaths depend upon your verdict. They are soldiers, but you are to remember that they are fellow-subjects also. Soldiers, when they act properly in their department, are an useful set of men in society, and indeed, in some cases, they are more useful than any other members of society, as we happily experienced in the late war, by the reduction of Canada, whereby our liberties and properties have been happily secured to us: and soldiers, Gentlemen, are under the protection of the same laws equally with any other of his Majesty's subjects.

(*k*) 1 *Hale*, 479. (*l*) *Kely*, 131. *Foster*, 290.

There have been attempts to prejudice the minds of the good people of this province against the prisoners at the bar, and I cannot help taking notice of one in particular, (which included also an insult on this Court) published in one of the weekly papers the day before this trial was to have come on. I think I never saw greater malignity of heart expressed in any one piece; a malignity blacker than ever was expressed by the savages of the wilderness, for they are in the untutored state of nature and are their own avengers of wrongs done to them; but we are under the laws of society, which laws are the avengers of wrongs done to us: I am sorry I am obliged to say it, but there are persons among us who have endeavoured to bring this Supreme Court of law into contempt, and even to destroy the law itself: there may come a time when these persons themselves may want the protection of the law and of this Court, which they now endeavour to destroy, and which, if they succeed in their attempts, it may be too late for them to repair to for justice: but I trust, that the ancient virtue and spirit of this people will return and the law be established on a firm basis. If you, Gentlemen, have seen or read any of the libels which have been published, and have imbibed prejudices of any sort, I do now charge you, in that sacred Name which you have in the most solemn manner invoked for the faithful discharge of your present trust, to divest your minds of ~~every thing that may tend to bias them in this cause~~: it is your duty to fix your eyes solely on the scales of justice and as the law and evidence in either scale may preponderate, so you are to determine by your verdict.

Gentlemen, the prisoners at the bar are indicted, with others, for the murder of five different persons; viz. Carrol, for the murder of James Caldwell; Killroy, for the murder of Samuel Maverick; White, for the murder of Patrick Carr; Hartegan, for the murder of Samuel Gray; Warren, for the murder of Crispus Attucks. Observe, that the five prisoners I have now named, are severally charged as principals in the different supposed murders, and the others as aiding and abetting, which in the sense of the law makes the latter principals in the second degree.

I should have given to you the definitions of the different species of homicide, but as my brother hath spoken so largely upon this subject, and hath produced so many and so indisputable authorities relative thereto, I would not exhaust your patience which hath so remarkably held out during this long trial. But I would add one authority to the numbers which have been produced, not that it immediately relates to this case, but I the rather do it, because I see a mixed audience, and many from the country whom it more directly concerns: it is cited from the celebrated Ld. C. Just. HALE by the great and upright Judge FOSTER, viz. *If a person drives his cart carelessly, and it runs over a child in the street; if he have seen the child and yet drives on upon him, it is* MURDER, *because wilfully done; here is the heart regardless of social duty: but if he saw not the child, it is* MANSLAUGHTER; *but if the child had ran cross the way and the cart went over the child before it was possible for the carter to make a stop, it is by* MISADVENTURE.

The law that was given to Noah after the deluge, viz. *Whosoever sheddeth man's blood, by man shall his blood be shed*, hath lately been urged in the most public manner very indiscriminately, without any of the softenings of humanity. Moses, in his code of laws, mentions the same, though in different words, viz. *He that killeth a man, he shall be put to death:* but be pleased to remember, Gentlemen, that Moses was the best commentator on his own laws, and he hath published certain restrictions of this law, as, *If one thrust another of hatred that he die, the slayer shall* surely *be put*

to death ; but *if he thrust him* suddenly *without enmity, or cast a stone upon him, not seeing him, so that he die,* in those cases there were cities of refuge appointed for the manslayer to flee to, that his life might be safe : so that to construe that law to Noah strictly, is only to gratify a blood thirsty revenge, without any of those allowances for human frailties which the law of nature and the English law also make.

I would recommend to you, Gentlemen, in order to your forming a just verdict in this cause, to satisfy yourselves in the *first* place, whether or not the prisoners at the bar were an unlawful assembly when they were at the Custom House, for on that much depends their guilt or innocence. That they were nigh the Custom House when the *five* persons mentioned in the indictments were killed you can have no doubt, for it is conceded. Inquire then how they came there. Now, two officers, viz. Capt. Mason and Capt. O'Hara have sworn that a sentinel was placed at the Custom House, by orders of the commanding officer to protect the King's monies, and that it is at his peril if he stirs from his duty : it appears by divers witnesses that this sentinel was attacked and called for aid ; upon which a party, consisting of the prisoners at the bar with an officer at their head, went down to protect him : they were under obligation by act of parliament to obey their commanding officer ; and thus far, being at their post constituted them a lawful assembly.

Consider next, whether those who were collected around the prisoners at the bar, were a lawful or unlawful assembly ; and in order to satisfy yourselves, weigh the evidence that hath been offered impartially. But I cannot help taking notice in this place, that some delicacy hath been used at the bar, in calling those people a *mob*. *Mob* is only a contraction of a Latin word which signifies a tumultuous crowd gathered, but I shall use the legal phrase and call such a crowd *a riotous assembly,* if the sound is more agreeable than *mob*.

As my brother Trowbridge has been very full in his remarks upon the evidence, and as you Mr. Foreman have wrote down from the witnesses, mouths what they testified, which, is somewhat uncommon, and for which you are to be applauded, I shall therefore only make a few remarks on those I think the most material testimonies, not beginning in the order of *examination*, but in the order of *time*.

Thomas Simmons says, that betwixt *eight* and *nine* o'clock on that unhappy evening, which was before the firing, for the firing was not till between *nine* and *ten* he heard people at the Sugar house barracks, which are called Murray's barracks, say, *If the soldiers would not come out and fight them, they would set fire to the four corners of the barracks, and burn every damned soul in them ;* that there was a considerable number of them armed with cutlasses, swords, and sticks.

William Davis is the next witness I shall take notice of ; he is a gentleman who is a stranger to me, but whose character stands unimpeached in this Court, and who hath given a distinct testimony of what passed under his notice : he says, that about *eight* o'clock he saw about *two hundred in* Fore street, *armed with different weapons, threatening to knock down the first soldier or bloody back they should meet ; some proposed to go to the southward and join their friends there, and drive all the soldiers out of town. At* Dock-square, *about nine o'clock, he says he saw numbers in the market tearing up the stalls and saying, damn the dogs, where are they now ? let us go and kill that damned scoundrel of a sentry, and then attack the* Main guard ; *others said,* Smith's *barracks.* At Oliver's *dock* he says, *he saw numbers with clubs : one man was loading his piece, and said he would do for some of them scoundrels that night, and said, damn the villains, scoundrels, soldiers and commissioners,*

and damn the villain who first sent them here, they should not remain here above two days longer.

Allow me, Gentlemen, to make a pause at this last part of the evidence viz. *Damn the villain who first sent them here ;* and make an observation which I am sorry for the occasion of, the expression having been justified. I venture to affirm that man a villain who uttered it, for it was *his Majesty* who *sent them here, and here they were fixed by his order and authority.*

Dr. Hirons, who lives near to Murray's barracks hath told you, that a little after *eight* o'clock he saw people coming from Dock square and heard the words, *Town-born turn out,* twenty or thirty times, and the people increasing. He mentions the altercations between the officers and inhabitants, and a little man talking with an officer, saying, *You know the town and country have been used ill, we did not send for you, we won't have you here, we'll get rid of you, or drive you away ; and that then about two thirds of them went off and said, let's go to the main guard, huzza for the main guard.*

Dr. Jeffries says, that about eight o'clock he saw the passage to Murray's barracks filled with inhabitants, who with ill language dared the soldiers to fight : he imagines there were *seventy* or *eighty* people, and but *three* soldiers, and that when the officers were endeavouring to appease the people, snow-balls were thrown at them ; and that when they told the people that the soldiers were secured in their barracks and could not come out, somebody replied, *You mean they dare not come out, you dare not let them.* Some then said *home,* others said, *no we shall find some in King street,* others said, *we'll go to the* Main guard. Dr. Jeffries hath been so distinct and particular, that you cannot but remember his testimony.

As to the pains which have been taken to exculpate this town from being concerned in the fatal action of that night, they seem to me to have been unnecessary. It is true there hath been, in times past, no place more remarkable for order and good government than this town ; but as it is a seaport town and of great trade, it is not to be wondered at, that the inhabitants of it should be infected with disorder as well as other populous places.

James Selkrig, with three others, say, that before the bells rang they saw, not far from Murray's barracks, a large number armed with different weapons ; some of them say nigh two hundred ; that some of the people had been repulsed from the barracks, and after that, a tall man with a red cloak and white wig talked to the people, who listened to him and then huzzaed for the main guard. I cannot but make this observation on the tall man with a red cloak and white wig, that whoever he was, if the huzzaing for the main guard and then attacking the soldiers, was the consequence of his speech to the people, that tall man is guilty in the sight of GOD, of the murder of the *five* persons mentioned in the indictment, and although he may never be brought to a court of justice here, yet, unless he speedily flies to the city of refuge, the Supreme Avenger of innocent blood, will surely overtake him.

John Gridley hath told you, that he heard numbers before the Town house say, God damn the rascals ; some said this will never do, the readiest way to get rid of those people is to attack the main guard, strike at the root, this is the nest ; others replied, damn you, that's right. All this was before the soldiers had formed.

It would be too tedious to recite the numbers of testimonies to prove a design to attack the soldiers : I have selected a few, which seem to prove the intent, for there are no less than *thirty eight* witnesses to this fact, *six* of whom the counsel for the King have produced. Compare them, Gentlemen, and then determine whether or not there is any room to doubt of

the numbers collected around the soldiers at the Custom house, being a riotous assembly.

I will return now to the soldiers and view their behaviour whilst they were going upon duty at the Custom house, and whilst they were there. As they were going from the main guard to their post, to support the sentry, who by the way behaved with a good temper of mind, in endeavouring to avoid a dispute, by attempting to get into the Custom house, which he was by no means obliged to do, I say, as they were going down, Nathaniel Fosdick says, they bid him make way, but he refused: instead of forcing him to give way, he says, they gave way to him, and passed to their post; when they got there, they loaded; and John Gridley says, that whilst they were loading, he passed between the files and they put up their guns to let him pass. I cannot find, upon examining the testimonies, that any one soldier stirred from his post, and indeed it might have been fatal to him to have broken his orders; but on the contrary, it hath been said, that had they stepped forward they might have killed the people, but that they only pushed their bayonets as they stood to keep off the people who were pressing on them, at the same time bidding them keep off.

Now consider whether the prisoners had any just provocation to fire upon the inhabitants, for that some of them did fire, you can be in no doubt. There are *twenty five* witnesses who have sworn to *ice, snow balls, sticks*, &c. being thrown at the prisoners, *ten* of whom, are witnesses for the Crown. There are nigh *thirty* witnesses who have sworn to words of provocation uttered against the prisoners, as daring them to fire, and threatening to kill them; but you must remember that words only, are no provocation in law to justify the killing of a person; but if threatening expressions are attended with an attempt on the life of a man, in such a case a killing may be justified; and if any such facts appear in this trial, you must consider them thoroughly. And here, I would take notice of the testimonies of some of the witnesses, viz. that although they were close to the soldiers, they saw nothing of any kind thrown at them, nor heard any *huzza* or any *threatening*: nay, one witness is so distinct, as to tell, in a cloud of smoke, which guns killed the different persons. I know not how to account for such testimonies, unless by the witnesses being affrighted, which some of them say they were not: they themselves perhaps may satisfy their own minds.

Dr. Jeffries relates an account which he had from Patrick Carr, one of the deceased, who on his death bed repeatedly told him and confirmed it but a few hours before he died, that he went with a design against the soldiers, that the soldiers were pelted as they were going to their post, that he thought they were abused and that they would really have fired before, for he heard many voices cry out, kill them, and that he thought they fired to defend themselves: that he forgave, and did not blame the man, whoever he was, that shot him; that he blamed himself for going to the riot, and might have known better, for he had seen soldiers called to quell riots, but never saw any bear half so much before. This Carr was not upon oath, it is true, but you will determine, whether a man, just stepping into eternity, is not to be believed; especially in favour of a set of men by whom he had lost his life.

Ye have one difficulty to solve, Gentlemen, and that is, that there were *five* persons killed, and here are *eight* soldiers charged with murdering them. Now one witness says, that the Corporal did not fire, and Thomas Wilkinson says, that the gun of the *third* or fourth man from the eighth flashed, so that there are *two* guns of *eight* not discharged, and yet it is said

seven were fired. This evinces the uncertainty of some of the testimonies. My brother Trowbridge hath explained the difficulty of charging any one prisoner with killing any one particular person, and hath adduced an authority from Lord Chief Justice Hale, to support him; so that this maxim of law cannot be more justly applied, than in this case, viz. That it is better that *ten* guilty persons escape, than *one* innocent person suffer: indeed as to *two* of the prisoners, there is no great doubt of their firing, namely, Montgomery and Killroy. As to Montgomery, it seems to be agreed that he was on the right, and Richard Palmes, says, that a piece of ice or a stick struck his gun before he fired: and Andrew, Mr. Wendell's Negro man of whom his master gives a particular and good character is very distinct in his account; and he says, that a stout man struck the grenadier on the right, first on his gun and then on his head, and also kept his bayonet in his left hand; and then a cry of kill the dogs, knock them over; upon which he soon fired: here take the words and the blows together, and then say whether this *firing* was not justifiable.

As to Killroy, there have been stronger attempts to prove him guilty of murder than any other. *Two* witnesses have sworn, that his bayonet was bloody next morning; but nothing hath been offered in evidence to prove how it came so; I have only one way to account for it; if it was bloody, viz. that by poking to keep off Nathaniel Fosdick it might become so by wounding him in the breast and arm. Nicholas Ferreter, who the week before beat one of the soldiers at the Rope walks, says further, that Killroy was then at the Rope walks; but at the same time he says, that, Killroy uttered no threatenings but only daring the Rope makers to come out. But Samuel Hemmingway says, that some time before the 5th March he heard Killroy say, that he would not miss an opportunity of firing on the inhabitants. How the conversation was had, whether it was maliciously spoken or was jocose talk doth not so fully appear, but it would be extremely hard to connect such discourse with this transaction; especially, as his being at the Custom House was not voluntary but by order of his officer.

Thus, Gentlemen, I have as concisely as I could, without doing injustice to the cause, summed up the evidence to you: I was afraid of being tedious, otherwise I should have more minutely considered it.

If upon the whole, by comparing the evidence, ye should find that the prisoners were a lawful assembly at the Custom house, which ye can be in no doubt of if you believe the witnesses, and also that they behaved properly in their own department whilst there, and did not fire till there was a necessity to do it in their own defence, which I think there is a violent presumption of: and if, on the other hand, ye should find that the people who were collected around the soldiers, were an unlawful assembly, and had a design to endanger if not to take away their lives, as seems to be evident from blows succeeding threatenings; ye must, in such case acquit the prisoners; or if upon the whole, ye are in any reasonable doubt of their guilt, ye must then, agreeable to the rule of law, declare them innocent.

As I said at first, this cause is of the last importance to the prisoners, their lives or deaths depend upon your verdict; and may you be conducted by the Supreme Wisdom to return such an one, as that your hearts may not reproach you so long as you live, and as shall acquit you at that tribunal, where the inmost recesses of the human mind shall be fully disclosed.

Each of the other Justices also summed up the evidence to the Jury very particularly, and gave their opinions of the construction of law upon the evi-

dence, but as they differed in no material point from the two Justices, (who according to the custom of the Court) spoke first, they thought it unnecessary to make public what was severally delivered by them. The Jury withdrew for about two hours and an half, and then returned to the Court.

VERDICT.

William Wemms, James Hartegan, William M'Cauley, Hugh White, William Warren, and John Carroll—NOT GUILTY.

Matthew Killroy, and Hugh Montgomery, not guilty of murder, but GUILTY of MANSLAUGHTER.

Wemms, Hartegan, M'Cauley, White, Warren and Carroll were immediately discharged; Killroy and Montgomery, prayed the *Benefit of Clergy*, which was allowed them, and thereupon they were each of them burnt in the hand, in open Court, and discharged.

☞ *It may be proper here to observe, that Edward Manwaring, John Munro, Hammond Green, and Thomas Greenwood, who were charged by the Grand Jury, with being present, aiding, abetting, assisting, &c. William Warren in the murder of Crispus Attucks, as is at large set forth in the Indictment, (see pages 3 and 4) were tried on the 12th December following, and all acquitted by the Jury, without going from their seats.* Edrs.

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